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ABSTRACT

This report is the result of a year-long evaluation of special education in New York City (New York) and presents major recommendations for reorganizing general and special education. It proposes a school-based model with an integrated general/special education system, and use of an enrichment allocation from merged special and general education funds to meet the needs of students with disabilities and students at risk of academic failure. It recommends creation of Instructional Support Teams within schools, formal evaluations of students by a district-level multidisciplinary Committee on Special Education, significant investment in school-based professional development, creation of an independent Accountability and Quality Assurance Office, changes in state funding mechanisms to encourage the placement of students in neighborhood schools, and restoration of funding to general education. The report begins with an executive summary and an introduction. The following six chapters address: (1) why the current system doesn't work; (2) guiding assumptions of the study; (3) major features of the school-based model; (4) implications for high schools; (5)implications for District 75/citywide programs; and (6) implications for preschools. A concluding chapter presents the study's 14 specific recommendations and suggestions for phased-in implementation. Appendices provide: public reaction to the first draft of this report; a legal analysis of the proposed changes by Perry A. Zirkel; and a review of financing dimensions of the proposed changes by Thomas B. Parrish. Contains 15 references. (DB)

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FOCUS ON LEARNING:

A Report on Reorganizing General and Special Education in New York City

October, 1995

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Focus on Learning: A Report on Reorganizing General and Special Education in New York City
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Executive Summary

Focus on Learning: A Report on Reorganizing General & Special Education in New York City

As recently as twenty years ago, many students with disabilities were excluded from public education and, when included, were often taught in separate, inadequate, and sometimes inhumane settings. Federal action through laws such as PL 94-142; court intervention through cases such as *Jose P.*; and the development of state and local programs have improved the education of students with special needs. For many, the days of exclusion and mistreatment are over. Almost 13 percent of students in New York City public schools are now classified as disabled and almost 25 percent of the City's public school budget is spent on their education.

But despite this radical change in educational policy and practice, stakeholders, providers and constituents are convinced that the City's special education programs are not serving the majority of their students effectively, efficiently, and equitably. Special education produces limited outcomes because:

1. Accountability is very limited. There are no useful instructional standards and very little useful data on educational and behavioral outcomes.

2. Far too many students are placed in separate settings rather than in more appropriate, less restrictive instructional settings defined by state and federal law.

3. Students of color are over-represented in special education, and particularly over-represented in separate special classes.

4. Many students are placed in special education not because of a disability but because general education is not meeting their learning needs.

5. The cost of evaluating, transporting, tracking, re-evaluating, mainstreaming, and decertifying students who may not be disabled is siphoning off resources from a resource-starved public education system.

We believe that many students assigned to special education do not have the disabilities that special education was created to address, but are placed in special education because general education teachers and their schools don't have the resources, capacity or training to respond effectively to their learning needs. But special education was *not* designed to address the needs that general education fails to meet. Special education is, ultimately, alternative or enriched *instruction* and support for *students with disabilities.*

Our report recommends major structural changes to respond more effectively to students experiencing academic or behavioral problems, both those in general education and those in special education, and particularly those classified as mildly or moderately disabled whose instruction is the responsibility of the 32 community school districts and the Division of High Schools. We also recommend some smaller changes in the citywide programs (District 75) serving students with severe disabilities. Improving general education's capacity to meet the needs of a much broader range of students requires a major shift in how our entire school system operates. We need structural changes to create new school practices that help school staffs respond very differently to the rich diversity of children's learning styles and learning needs. Such new practices have been developed in a small number of New York City's schools; our recommendations encourage the development of new practices in *all* the City's public schools.

We propose a school-based model that restructures schools and classrooms, deploys personnel in new ways, reconceptualizes instruction and assessment, and changes how funds are allocated. The overall goal is to improve teaching and learning. The critical unit is the school, and the personnel critical to making our model work are school staff. Implementing our model would transform our dual system, with instruction separated from evaluation and special education students separated from general education students, into a far more integrated system that better serves the learning needs of all students.

The school-based model invites each school to assess the needs of its more precarious students and to create, with an enrichment allocation consisting of merged special and general education funds, the classroom structure and school organization that best meets *all* its students' needs. *The primary purpose of the enrichment allocation is to ensure that classroom teachers have adequate instructional and non-academic supports to meet the needs of students with disabilities or students at risk of academic failure.* The special education funds to be merged are *only* those allocated to community school districts and high schools for programs for students with mild and moderate disabilities. The general education funds to be merged include compensatory education resources and other supports. We believe that if teaching and learning *in general education* were significantly restructured, using the enrichment allocation, most students' learning needs could be met without referral to special education and placement in separate settings.

To help schools meet student learning need, we recommend the creation of an Instructional Support Team (IST). The IST should be composed primarily of classroom and cluster teachers, supplemented by supervisors, guidance counselors, clinicians and psychologists (former members of SBSTs) working in the school as support staff, as well as related service providers such as speech teachers and counselors. The IST's prime purpose is to provide informal, rapid-response intervention to help classroom teachers resolve particular instructional or behavioral problems with students. The IST's priority is to help the classroom teacher develop and implement strategies that reduce or resolve students' learning or behavioral difficulties.

To ensure that ISTs concentrate on helping schools meet their students' learning needs, IST's will have no power to *formally* evaluate students or to classify them as disabled. ISTs can refer students to a district-level multi-disciplinary Committee on Special Education (CSE) for formal evaluation, once they decide the school has exhausted its instructional and support efforts. But if district-level CSE evaluation results in student placement in a different school, the referring school will face a fiscal disincentive – it will lose (from its enrichment allocation) the amount of money it costs to educate that student in the new instructional setting, which may well be higher than the cost of educating the student in the home school. Furthermore, we recommend that the standardized test scores of all students, including those evaluated and classified as in need of special education (except students with severe disabilities), be included in their home school's aggregated test score results.

School Based Support Teams (SBSTs) would be dissolved. Many of their former members would join the school's support staff and report to the school's principal, while other members would become part of the district-level CSE. The CSE would be restructured as part of the community school district administration and would report to the superintendent, as is the case in most school districts outside New York City. Integration of the CSE function into the school district administration would support the integration of instruction and assessment in district schools, and would also generate significant efficiency savings that could be used to support the improvement of teaching and learning.

Formal evaluations would be conducted only by the district-level CSE teams. For students found to have mild or moderate disabilities, the CSE would recommend placements within the district's boundaries, or face significant fiscal disincentives similar to those imposed on schools whose students are referred to the district for evaluation and subsequently placed in other district schools.

Parents will maintain their right to request a formal evaluation, at any time, without consulting the IST or the school, if they so choose.

Making the school-based model work requires extensive professional development. Such development must help teachers recognize and address the needs of students with disabilities; provide opportunities to develop and try out new teaching strategies in school and classroom settings; enhance staffs' repertoire of teaching skills, substantive knowledge, communications skills and decision-making capacities; and help staff develop the capacity to evaluate their school and its students. Therefore we recommend significant new investment in school-based professional development.

Once responsibility for decision-making, professional development and instructional planning is lodged at the school site, the issue of educational accountability becomes even more critical. The history of New York City schools' treatment of students with disabilities suggests that we cannot simply give local schools the resources and the discretion to reconfigure their instructional organization and assume they will effectively respond to all students' learning needs. Therefore we recommend the creation of an independent Accountability and Quality Assurance Office, run by a director selected by the Chancellor, representatives of the *Jose P.* plaintiffs, and representatives of public interest education groups.

The Accountability and Quality Assurance Office (AQAO), would evaluate district and school efforts to phase in the school-based model, and would review the resulting outcomes for students at risk of school failure and students with disabilities. The AQAO would provide semi-annual reports to the Chancellor about school, district and systemic instruction and learning outcomes; meet periodically with representatives of the *Jose P.* plaintiffs; and make regular public reports of their findings and recommendations. The AQAO's status would be similar to that of the independent Special Commissioner for Investigation.

The AQAO would also recruit, establish, train, supervise and support district-level Parent Advocacy Teams in every community school district, as well as in the Division of High Schools and in District 75. These Parent Advocacy Teams would be responsible for ensuring that parents are informed about their due process rights; would provide an informal appeal mechanism for parents or school staff convinced that students' needs were not being adequately met; would help parents access the mediation resources provided by the New York State Education Department; and would function as an early warning system to the AQAO about problematic school or district performance. Teams would include parents, members of public interest or advocacy groups, and professionals outside the school system; all members would be appropriately compensated for their services.

The school-based model makes community school districts responsible for the integrated assessment, placement and instruction of all the district's students requiring special attention. Districts would also become responsible for helping schools make the most effective use of their professional development allocations by focusing professional development resources on improving school instructional practice. Additionally, fiscal incentives would encourage districts to collaborate with District 75 to create programs for students with severe disabilities in close-to-home settings. The goal of our recommendations is *not* to replace District 75 programs with district-developed programs, but to develop new and viable options to guarantee program quality and provide meaningful parent choice.

We recommend that the school-based model be implemented at the high school level as well, by merging general and special education funding streams, dissolving SBSTs, and creating ISTs and Parent Advocacy Teams. We recommend that the Division of High Schools have its own CSE structure to evaluate students aged 14 or over who have, or are suspected of having, disabilities. Responsibility for evaluation of such students would move from the 32 district-run CSEs to the six high school CSEs (five borough superintendencies and the Alternative High School superintendency) our proposal would create.

To increase the options for students with disabilities once they reach high school age, we recommend the creation of a new superintendency for High School Special Education. Administrative responsibility for SIE IV to SIE VIII programs for high school-age students with severe disabilities would be transferred from District 75 to this new Superintendent of High School Special Education, whose responsibilities would include the provision of a much broader range of appropriate educational placements for high school students with disabilities, as well as ensuring that such students receive adequate transition planning for their post-high school career.

We also recommend major changes in state funding mechanisms because state allocations currently provide: (1) significant incentives for school districts to place students in special education, and (2) also encourage more restrictive placements in self-contained settings. We recommend a variety of strategies in addition to funding changes to encourage the placement of students with disabilities in close-to-home schools. We suggest that our recommendations would generate significant efficiency savings through reductions in transportation costs and decreased expenditure on evaluation and placement functions. We call for significant changes in the evaluation, placement and funding of programs for pre-school children with disabilities. And we urge that a comprehensive evaluation be instituted, when implementation begins, to assess the effectiveness of the structural changes we recommend.

Finally, we argue that continuing to impose budget cuts on general education inevitably results in forcing more students into special education. We believe that expanding the capacity of general education to meet the needs of many students now placed in special education programs for the mildly and moderately disabled can shift significant resources from evaluation, placement, transportation and tracking to classroom instruction and support. But we cannot expand general education's capacity, by merging funds for mildly and moderately disabled students, while simultaneously reducing its capacity through budget cuts. Therefore we believe that, to effectively implement the structural changes we recommend, we must begin to restore funding to schools whose instructional and support capacities have been severely reduced by the last five years of budget cutting.

OUR RECOMMENDATIONS call for profound changes in how our schools are organized, and how teaching and learning is currently conducted. We believe that the scale of change our recommendations define will lead to improved educational outcomes, more effective use of resources, and more equitable treatment for all our students.

1. Work to change state funding formulas that currently provide incentives to place students in special education, and in inappropriately restrictive settings. Special education funding allocated to community school districts and high schools for students with mild and moderate disabilities should be census-based – that is, based on the percentage of those students in the total school population. For the 1-2% of students with severe disabilities, state high excess cost aid formulas should be based on state reimbursement for actual costs.

2. Negotiate a state waiver with a provision to maintain, for at least five years, the level of support for special education currently derived from both state aid formulas and regularly calculated annual increases. Negotiate with both state and city sources for a significant additional allocation for the massive professional development necessary to effectively implement the subsequent recommendations.

3. Require community school districts and high school superintendencies to merge special education resources for mildly and moderately disabled students with supplementary general education resources to create a single enrichment allocation for each school. This allocation would include all federal and state compensatory and preventive funding, as well as the resources generated by special education programs for students with mild and moderate disabilities. Such funding should be used, within the context of broad guidelines, to serve the needs of all students with mild and moderate disabilities, as well as the needs of all students at risk of school failure.

4. Require informal classroom-based assessment of all students at risk of school failure and all students with disabilities. Such assessment must be instructionally based so that learning settings can be best organized to meet students' educational and developmental needs.

5. Establish an Instructional Support Team (IST) in every school, to be drawn primarily from each school's classroom and cluster teachers, and supplemented by supervisors, guidance counselors, support staff, former SBST staff and related service personnel. Since the IST's primary responsibility is to provide quick response to student and teacher classroom difficulty, its specific composition will vary according to classroom needs.

6. Require each school to develop a school-level instructional plan designed to meet the needs of all academically at-risk students. Elementary school plans must emphasize early intervention programs; include counseling, health screening and mental health services; create an effective support system for classroom teachers; and promote the appropriate education of children with disabilities in the least restrictive environment.

7. Provide resources and support to develop school and classroom-based processes of intensive professional development that increase school staffs' capacity to reorganize teaching and learning, so that the educational and developmental needs of all students are effectively met. Districts must also insure that each school has the expertise, particularly at the supervisory level, to provide effective responses for students with special needs. Teacher preparation programs in post-secondary institutions should be reconceptualized to integrate special education training into all courses of study.

8. Transfer responsibility for all formal evaluation and placement of children referred for potential disabilities to the community school districts and the High School Division. Existing CSEs, now a centralized function, should become responsible to community school districts; new CSEs should be developed within borough superintendencies and the Alternative High School Superintendency for students aged 14 to 21. Community school district and high school superintendents should become responsible for both instruction and evaluation, as is the case outside New York City, and should insure that *all* students with disabilities receive timely evaluation and placement and an appropriate education in the least restrictive environment.

9. Dissolve the SBSTs in every school. Some former SBST members will be permanently assigned to their local schools and will become part of each

school's support services for students and staff. Other former SBST members will become part of CSE teams at the community school district or high school superintendency level.

10. Empower District 75 to help community school districts develop effective programs for students with severe disabilities, thereby creating choices of District 75 or local district programs for parents. Give the Division of High Schools administrative responsibility for all SIE IV, V, VI, VII and VIII programs for high school-age students. Create a new superintendency *within* the Division of High Schools to oversee these programs and to help insure that all students with disabilities entering high school choose, or are placed in, the most appropriate programs and receive appropriate post-school transition services.

11. Create significant fiscal incentives to educate children in their home schools, both to reduce the inappropriate referral of children to special education, and to provide a broader range of placement options for children with mild and moderate disabilities and children with low-incidence or severe disabilities.

12. Establish an Accountability and Quality Assurance Office to assess the effectiveness of instructional strategies and practices for students with disabilities; provide information to help districts and schools improve educational outcomes, particularly for their most precarious students; identify schools and districts whose practices consistently fail to meet the educational needs of low-achieving students and students with disabilities, and refer those schools and districts to the Chancellor for corrective action; report regularly to the *Jose P.* plaintiffs and the public; and recruit and provide training, supervision and support for Parent Advocacy Teams in all districts.

13. Change current arrangements for educating pre-school children with disabilities by: assigning community school districts the responsibility and the resources to evaluate and place 3- to 5-year-old children with disabilities; working to get state funding for expanded programs for three and four year-olds such as Superstart Plus, to provide sufficient seats for those pre-school children with disabilities who can benefit from such an environment; and allowing placement in approved private pre-schools only when public options don't exist or are inappropriate.

14. Develop a comprehensive evaluation design to assess the effectiveness of these structural changes by focusing on a variety of outcomes, especially outcomes of students with disabilities or at risk of school failure. The evaluation should be initiated when implementation begins.

I. Introduction

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As recently as twenty years ago, many students with disabilities were excluded from public education and, when included, were often taught in separate, inadequate, and sometimes inhumane settings. Federal action through laws such as PL 94-142; court intervention through cases such as *Jose P.*; and the development of state and local programs has improved the education of students with special needs; for many, the days of exclusion and mistreatment are over. Almost 13 percent of students in New York City public schools are now classified as disabled and almost 25 percent of the city's public school budget is spent on their education.

But despite this radical change in educational policy and practice, stakeholders, providers and constituents alike are convinced that special education in New York City is not serving the majority of its students effectively, efficiently, and equitably. Though our city's public schools are doing much more than they did twenty years ago, they are still not meeting the educational and developmental needs of most students in the special education system.

This report hopes to contribute to meeting those needs more effectively. The team that developed this report is from New York University's Institute for Education and Social Policy, a new interdisciplinary center committed to improving urban education by combining expertise in teaching and learning with expertise in policy issues such as finance and governance. The Institute identified special education as a key priority for policy study because of the increasing growth of the special education sector within urban education, because improving special education requires consideration of both instructional and policy dimensions, and because New York University has particular knowledge and experience in both domains.

The external push came from former New York City Schools Chancellor Ramon Cortines, who made the improvement of special education one of his top priorities. When Institute staff suggested the possibility of a special education study, the Chancellor asked that it be included within his comprehensive examination of the special education system, building on the work of previous commissions and task forces. In December 1994, the Chancellor formally requested Norm Fruchter, Co-Director of the Institute and Program Advisor for Education to the Aaron Diamond Foundation; Robert Berne, Dean of the Robert F. Wagner Graduate School of Public Service and Co-Director of the Institute; Ann Marcus, Dean of the School of Education; and Professors Mark Alter and Jay Gottlieb of the School of Education, to provide him with a "final set of recommendations on the reform and restructuring of special education."

These five were the original members of the NYU Institute's Special Education Study Team; Professor Diane McGivern, Chair of NYU's Division of Nursing and a member of the New York State Board of Regents, was a key advisor. Dorothy Siegel played an invaluable role as consultant to the team, and Ross Rubenstein was the team's researcher. Carol Larsen organized and coded the testimony, and Carol Ascher expertly synthesized, analyzed and presented it. All the team members, as well as the NYU Institute, are very grateful to the W. T. Grant Foundation, and especially to its President, Beatrix A. Hamburg, M.D., for supporting the work that culminated in this report.

In the course of its work, the team met with numerous teachers, administrators, parents and policy makers to discuss school, program and systemic improvement. Though we are very appreciative of their contributions, we do not cite those with whom we met so that they cannot be held responsible for any of the ideas developed here, or for any errors we have inadvertently committed.

Our initial study, *Focus on Learning: Draft Report on Reorganizing Special Education in New York City*, was presented to Chancellor Cortines on May 19, 1995. To insure wide readership, discussion and debate, the Board of Education translated the draft report's Executive Preview into several languages and disseminated it to the city's schooling constituencies. (Unfortunately, because the full draft report was not as widely distributed, several misunderstandings were created by the compressed form of the Executive Preview.) The Board of Education held two rounds of public hearings, in June, 1995, in each of the city's five boroughs, and invited all interested parties to testify, or to submit written testimony, about *Focus on Learning*.

In Appendix A, "Public Reaction to *Focus on Learning*," we summarize the responses. (The Fund for New York City Public Education organized a series of focus groups to sample the views of the city's educational constituencies. Because some groups are still in progress, the Fund will report separately on its findings.) We are encouraged by the broad public response to *Focus on Learning*, and we've learned much from it. A later section of this Introduction describes the changes we've made, both in our text and our recommendations, in response to the testimony. But our core commitments to the need for comprehensive and systemic reform, as well as our sense of urgency, remain undiminished.

Several key ideas have guided our work. First, we have high expectations for all children and for our public education system. The challenge we face is how to improve that system so that it can meet the unprecedented demands of the 21st century.

Second, our objective is to establish a broad vision and direction for the reform of both special and general education; indeed, we've changed the final report's subtitle to *A Report on Reorganizing General and Special Education in New York City* to clarify our commitment to improve education for *all* New York City's public school students.

Third, although we've examined both special and general education, we have not engaged in original research. Instead, we've reviewed, analyzed and built upon the many studies that preceded our work.

Fourth, during the preparation of this report, we have been mindful of the budgetary pressures constricting the public sector, but this report is not a cost-cutting menu. While there are many fiscal implications of our recommendations, and while we believe that public education must be cost effective, our objective is to recommend ways to improve teaching and learning for all students.

Fifth, because we view education within a human development framework, we think the time dimension in student learning is critical, and that early interventions are the most effective interventions. Therefore this report focuses significantly on the early grades, and on developing more flexible instructional responses to student need in those initial grades.

Finally, we need to define how we see the context in which not only special education, but all schooling in New York City, operates. Many students who are found eligible for special education, but are not necessarily disabled, come from disadvantaged circumstances. When their family life, community supports or health conditions don't adequately prepare them for the complex demands of schooling, they may fall behind academically and display behavior unacceptable in or disruptive of classrooms. Alternatively, they may languish academically because their teachers and schools are unprepared or unable to meet their legitimate learning needs. Although we understand why such students are often referred for evaluation and removal from general education classrooms, we do not think that special education is an appropriate destination, and we are skeptical about what special education instruction and related services can accomplish for such students.

Other students – especially those with more severe disabilities – who are currently enrolled in special education may indeed be benefitting, at times substantially, from the education they receive. Many parents have demonstrated their strong allegiance to and gratitude for the special education that children with severe disabilities receive. Unfortunately, the lack of systematic data collection and reporting preclude any definitive statements about the effectiveness of special education, even with this population.

The goals of special education today are the same goals that created special education almost a hundred years ago: to provide students *with disabilities* with the academic and social skills that will enable them to continue their education, obtain meaningful employment and lead independent lives as productive, engaged citizens. The more immediate goals are to provide students with disabilities with the academic and/or social supports that will enable them to succeed in school.

Given those goals, we have the right to expect that special education programs will produce substantial improvement in the aggregate academic performance of the students these programs serve. Much of the urgency of our push for comprehensive reform stems from the failure of the Board of Education to assess the results of its special education programs, as well as from our fears, buttressed by our own research, that if such assessments were carried out, they would demonstrate little aggregate improvement in student academic performance, especially among students categorized as mildly disabled.

Because federal and state legislation targets the individual needs of students with disabilities, efforts to demonstrate substantial academic improvement could be carried out through comprehensive assessment programs that employ individual test protocols when necessary. More severely disabled students may require academic and/or social assessments based on more functional criteria of performance. For those students whose behavioral and/or language disabilities are the cause of their placement in special education, efforts to demonstrate extent of improvement must be carried out on a programmatic basis; criteria for this determination are not yet fully developed.

We are skeptical about what special education can accomplish for the great majority of students classified as mildly disabled because we think that many of these students do not have the disabilities that special education was created to deal with, but were placed in special education because general education teachers and schools don't have the resources, capacity or training to respond effectively to their needs.

Special education was designed to take on the student needs that general education fails to meet because of disabilities inherent in the student, not because of the limits of the resources available in general education. Nor was special education created as a substitute for the broader societal reforms that might reduce the toll that poverty, disadvantage and discrimination exact on families and their school-age children.

Special education was also not intended to provide non-disabled children with the range of social and health-related supports that many may need, indeed require, not only to progress through schooling but to profit from it. As escalating pressures on families intensify the needs children bring to school, the limited ability of general education to meet those needs will become even more obvious, and painful. But placing children whose needs general education cannot meet into special education classes is no solution, for those children or for our school system.

Special education is, ultimately, alternative or enriched instruction and support for students with disabilities, focusing on their individual educational needs. It cannot substitute for the necessary developmental conditions that we as a society owe, but too often fail to provide, the children who are our future citizens.

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We are grateful to the hundreds of education practitioners, parents, advocates and policy makers who testified in response to the initial draft of *Focus on Learning.* Because their testimony pinpointed many of the limits of both language and concept in our draft, we have made changes to clarify and expand our original intent. But we have also changed our design in response to the testimony, and have made specific changes in some of our Recommendations as well. What follows is a brief summary of the most significant changes.

Because we did not clarify our intent to merge only those special education funds that are allocated to community school districts and high schools for programs for students with mild and moderate disabilities, many readers mistakenly thought that we proposed merging *all* special education funding. Our funding recommendation now specifies merging only those funds "allocated to community school districts and high schools for students with mild and moderate disabilities," and calls for preservation of the concept of state high excess cost formulas, basing reimbursement on actual costs, for students with severe disabilities.

Similarly, our recommendation calling for the creation of a school-specific enrichment allocation by merging special education and supplementary general education resources specifies that the only special education funds to be merged are for programs serving students with mild and moderate disabilities.

Our recommendation to create Instructional Support Teams (ISTs) in each school drew significant support and pointed criticism; it also generated considerable confusion. Many readers perceived the IST as a substitute School-Based Support Team (SBST); others saw the scope of the ISTs' responsibilities as necessitating a new formal, even bureaucratic school structure.

We have tried to clarify our own conception in both the Recommendations and the text. We see the IST as an informal rapid-response instructional intervention to help classroom teachers resolve particular problems with students. Such quick, informal and effective responses depend on a cohort of experienced teachers, administrators and support staff, as well as available time for one or more of that cohort to do *informal* classroom observation, on teacher request, without resort to official procedures, schedules or assignments. Teachers experiencing particular problems with students must be able to request assistance from one of the core staff designated as IST members; often an individual consultation will prove sufficient. For more serious problems, it may prove necessary for a subset of a school's IST members to observe the class, confer and consult with the teacher. But again the priority is on rapid response and on minimizing the procedural requirements.

Our draft report recommended the provision of resources and support, at school and classroom levels, to help school staffs carry out the extensive reorganization of teaching and learning necessary to meet the needs of both general and special education students in new settings. Many readers argued that massive and systemic professional development was necessary to prepare general education teachers, administrators and support staff for the reorganization *Focus on Learning* proposes. Therefore we have changed our funding recommendation to call for a significant additional allocation for systemic professional development, at school and classroom levels, in addition to the broad-based state waiver that would continue current levels of special education funding, with annual increases, for at least the next five years.

Because many readers were confused about our recommendations for the School-Based Support Teams, we have clarified our language throughout the Recommendations and the text. Our design calls for formal evaluation *only* at community school district and high school superintendency levels, through CSE teams under the authority of, and reporting to, community school district and high school superintendents. Since, in our design, no formal evaluation, for the purpose of classifying students as disabled, takes place at the school level, we recommend that all existing SBSTs be dissolved, and their members become part of either school support staffs or district-level CSE teams.

Our recommendation to "give the Division of High Schools responsibility for all District 75 programs for high school-age students," caused consternation among many readers. Our words were read, understandably by many, as a transfer of all students in Specialized Instructional Environments (SIE) programs, including programs for multiply-handicapped (SIE I) and autistic (SIE III) children, as well as those in programs for the deaf, blind, hard of hearing and visually impaired, to general education high schools.

Our language was at fault; we meant to recommend that *administrative responsibility* only for SIE IV, V, VI, VII and VIII programs for high school-age students be transferred to the Division of High Schools. We have clarified our language in both the Recommendations and the text.

But many commentators objected to even this more selective transfer, arguing that the Division of High Schools lacked the expertise, experience and commitment to deal with the needs of students in SIE IV - VIII programs. We see this transfer of responsibility as an administrative integration that should enable high school-age students with disabilities to benefit from a much wider range of appropriate placements, and we have set out, in the text, an assessment process, based on IDEA requirements, to help them achieve appropriate placements. But to insure that the needs of these students are effectively met within the Division of High Schools, we have expanded our recommendation to create a new superintendency, within the Division of High Schools, charged with the responsibility for managing all SIE IV - VIII programs.

We have made other changes in both text and Recommendations. On the advice of several readers, we have expanded our recommendation about professional development to urge that teacher preparation programs in colleges and universities integrate training about meeting the needs of students with disabilities into their basic courses of study. We have clarified the integration of instruction and evaluation at the community school district and high school superintendency level. We have redefined the membership of the Parent Advocacy Teams so that all members are compensated for their services. We have expanded our incentive design to include the distribution, to districts and schools, of savings realized through reduction of bussing.

Thus several of our Recommendations, and much of our text, have benefitted from the public response to the initial draft of *Focus on Learning.* We are grateful for the broad, thoughtful and generous nature of the response; we have learned from it, and tried to incorporate all suggestions that would improve this final version. With the completion of this report, the policy task former Chancellor Cortines set for us is completed. What remains for education policy makers is the much harder task of using this report to assess, revise, reconstruct and reorganize both general and special education to more effectively serve the needs of all our city's public school students.

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Because *Focus on Learning* presents a broad design for restructuring New York City's public schools, we provide, in this section, a broad discussion of implementation guidelines rather than a more prescriptive implementation plan and timeline. What *Focus on Learning* proposes is a major shift in how our public education system "does school." The structural changes we recommend would require school practitioners to think, and operate, very differently in response to the rich diversity of children's learning styles and learning needs.

Our primary goal is to improve *general education* to effectively meet the needs of a broader range of students than our regular classrooms normally accommodate. The major structural changes we recommend – merging funding streams, creating ISTs, dissolving SBSTs, designing fiscal incentives to educate students in schools closer to their homes, providing school and classroom-based professional development – are the scaffolding on which we hope both general and special education practitioners will jointly build a new way of "doing school." Our design invites each school to assess the needs of its more precarious students and to create, with merged resources, the classroom structure and school organization that best meets *all* its students' needs.

Many individual schools across the city system have responded to the diversity of their students' needs by rethinking and reorganizing schooling, in the face of enormous structural, bureaucratic and financial constraints. Some are traditional schools that have launched major restructuring efforts; some are new schools that have begun with commitments to shape classroom and school organization to respond to student need. Our design is intended to encourage and support the development of similar processes in every public school.

What is required to implement the systemic restructuring *Focus on Learning* proposes? First, the design must be implemented as a totality. All our recommendations are designed for integrated implementation; each recommendation depends on, and reinforces, the others. Attempting piecemeal implementation may well reduce, rather than improve, teaching and learning conditions and educational results for children throughout our schools.

Second, we believe that effective implementation of such broad systemic change requires sufficient time. We propose an implementation period of at least five years, and the use of a phase-in approach that begins with those community school districts and high school superintendencies most prepared to implement the changes we recommend, and progresses across time to other districts and superintendencies.

Third, we believe that effective implementation requires a decentralized approach that encourages diversity, maximizes school and district initiative, and learns from the results of initial pilot efforts. Therefore we recommend that a Request for Proposal (RFP) approach be used to select the community school districts and high school superintendencies that begin the implementation process.

Moreover, we recommend that the RFP ask districts and high school superintendencies to develop their own solutions to much of the specifics of our design – for example, how instruction and evaluation should be integrated at district and superintendency levels, how district-level CSEs should be structured, how fiscal incentives can be designed to resolve the disparity of special education program distribution *within* districts, how ISTs can best be supported at school and district levels, and how school-based professional development can be most effectively structured by school staffs to support these changes. Rather than impose a uniform formula on all schools and districts, we recommend that a decentralized RFP process maximize the capacity of practitioners to develop solutions that best meet their local needs. We also recommend that such an RFP process provide incentives for collaborative efforts between District 75 and community school districts, to expand the number and range of quality programs serving students with severe disabilities.

Fourth, we believe that key aspects of the broad structural changes we recommend require systemic decisions. Therefore we recommend that the Chancellor create task forces or advisory groups, with an appropriate mix of administrators and school-based personnel, to operationalize our fiscal recommendations, particularly how to merge funding streams and how to develop our fiscal incentives and disincentives; as well as to recommend how to create, staff, train and select the members of both the system-wide Accountability and Quality Assurance Office and the district-level Parent Advocacy Teams.

Fifth, we believe that the scale of change implicit in our design requires the provision of significant new resources at the school and classroom level, for massive professional development and training for all school personnel, and to ensure that every school develops, among its staff and particularly among its IST members, the necessary expertise to help the school meet the needs of its more precarious students. Though this intensive level of professional development can be phased in as schools and districts are selected for implementation through the RFP process we recommend, the scale of resources necessary to provide such intensive development requires significant new systemic investment.

Sixth, the scale of structural change we recommend requires significant new investment not only in professional development, but in renewed fiscal efforts to reverse the effects of the budget cuts that have increased class sizes, in both regular and special education, to dangerously overcrowded levels while reducing essential support personnel. Continuation of such fiscal policy will make it impossible to restructure how we "do school."

The more a school is forced, by fiscal pressure, to narrow the range of students its resources can effectively serve, the greater the number of students it removes and places in special education. This inexorable process of constriction, in general education, and expansion, in special education, forces the expenditure of huge resources on the processes of evaluation, placement, transportation, tracking and reporting –

resources that could be far more beneficially spent on reducing class size and supporting teachers and students.

We believe that expanding the capacity of general education to meet the needs of many students now placed in programs for the mildly and moderately disabled can shift significant resources from evaluation, placement, transportation and tracking to classroom instruction and support. But we cannot see how general education capacity can be simultaneously expanded, by merging funds for mildly and moderately disabled students, while being continuously contracted through budget cuts. Such conflicting purposes are a recipe for disaster rather than a route to the systemic change our design proposes.

Therefore we recommend that, to adequately implement these systemic structural changes, more than a waiver is needed to provide at least five years of baseline funding, with annual cost increases. More than a significant new allocation of resources for massive, system-wide professional development is necessary. To effectively implement our broad-based changes, it is also necessary to begin to restore funding to schools whose instructional and support capacities have been severely damaged by the last five years of severe budget cutting.

This final report is the result of almost a year's intensive effort, and has benefitted from a long line of previous reports aimed at improving special education. Reaching the decision to carry out the changes *Focus on Learning* proposes has proved, in the past, an almost insurmountable hurdle. But the time is right for all the constituencies involved in a citywide special education system – whose outcomes none of them find acceptable – to come together to forge an agreement to restructure *both* general and special education. The New York City Board of Education (and particularly the Division of Special Education), the New York State Education Department, the various New York City agencies charged with fiscal oversight of the school system, the United Federation of Teachers and the Council of Supervisors and Administrators, the *Jose P.* plaintiffs, the city's advocacy and parent groups all experience, and articulate, severe frustration with the ineffectiveness of the current system. The scale of change we recommend requires that all these constituencies agree to work together to reconceptualize how to build new, more successful and more cost effective ways to help our schools better meet all our children's needs.

II. Why the Current System Doesn't Work:
A Review of the Evidence

Dissatisfaction with the current system of special education has been increasing, both nationally and in New York City. The issues raised about the efficacy of special education in New York City cluster into four broad categories: a pervasive absence of instructional accountability, involving both a lack of instructional standards and a lack of data on educational and behavioral outcomes other than standardized test scores; the limited use, by New York City, of the entire continuum of special education services prescribed by federal and state statutes, particularly the mandate to place students in least restrictive environments; the disproportionate representation of students of color in special education and particularly in special, self-contained classes; and the referral to and placement within special education of many students not because of disability but because their needs are not able to be met within general education.

These issues, coupled with the substantial added costs of special education services, raise critical questions about the appropriateness of special education for large numbers of New York City public school students. Faculty at New York University have been studying these issues for the past decade; this brief review will identify some of the more pertinent findings as well as some results that have not been previously published.

Absence of instructional accountability

Except for standardized test score comparisons, we have almost no data that can inform us about educational or developmental outcomes for students in special education settings. Beyond compliance with federal, state and court mandates, we have not promulgated educational standards that define learning goals for students with disabilities. The following discussion reviews the limited available evidence about student academic performance in special education. But such data only hint at the larger problem of the absence of appropriate and adequate instruction in both general and special education classes.

Between 1932 and 1968, a series of controlled studies at the national level documented the inability of self-contained special education classes to produce greater gains in academic achievement than general education classes for similarly academically disabled children. More recently, NYU faculty have studied the academic achievement of special education students in the city's schools. In 1985, NYU faculty analyzed the reading and math scores of a random sample of 800 special education students in one community school district. (Those 800 students were part of a larger subset of 4,500 special education students. Only about one in six students or 800 students within the larger sample had both reading and math achievement scores [from CAP – the Child Assistance Program data] for two consecutive years; those 800 students formed the basis for the analysis.)

An analysis of the reading scores of 390 of those students who attended resource rooms, randomly selected, resulted in two primary findings. First, students' median reading score improved from the 39th percentile to the 46th percentile. Second, slightly more than one-fourth of these students read on or above grade level.

When we analyzed the reading scores of students in MIS I classes, we found a median percentile score of 19 for a random sample of 321 students. The corresponding score for the same students one year later was at the 16th percentile. Although we did not determine whether comparable children would have performed better had they been educated in a setting other than MIS I, the data suggest that reading achievement scores for children attending MIS I classes did not improve.

We also analyzed arithmetic scores for the same sample of students. The median arithmetic score for the 390 resource room students declined from the 34th percentile to the 23rd percentile. The corresponding scores for students in MIS I programs declined from the 8th to the 5th percentile.

These data raise questions about current levels of appropriate instruction, but they also raise questions about what measures of assessment are appropriate for students in special education settings. Standardized test scores are rarely reliable guides to student learning achievement. Moreover, because many students are placed in special education because of specific learning problems, we do not know what levels of academic achievement, such as yearly gains or grade-level performance, we can expect them to reach. Until the issue of standards is resolved, aggregate results remain very crude indicators. If we had more refined and differentiated academic indicators, we would still not be assessing growth in behavioral and developmental areas, the initial cause of many students' referral.

We do not have more current achievement data available at the pupil level. When we focus on the limited measure of grade-level performance, we know from aggregate data produced by the Board of Education's Office of Educational Research (OER), that few children in special classes ever attain grade-level performance. Data reported by OER, based on analysis of special education students' final two years in elementary or middle school, indicate that, as of the 1993 school year, only 58, or 2.7% of 2,165 students in self-contained elementary school classes tested on the DRP improved to grade-level performance. The corresponding figure for a 1992 elementary school cohort was 2.5%, with 52 of 2,234 tested students attaining grade-level scores after two years in self-contained classes. The same data also revealed that only about 8.5% of special education elementary school students whose reading scores were in the bottom quartile improved to the second quartile or higher after two years in special classes.

The data for middle schools was very similar, except that approximately 16% of middle school students whose reading scores were initially in the bottom quartile improved to the second quartile or higher.

When standardized achievement scores are employed as the sole criterion, the outcomes for students placed in self-contained special classes do not indicate substantial instructional progress. Again, though academic outcomes should not be the sole criterion on which to assess the progress of students within special education settings, no other data are currently available.

To attempt to broaden the analysis of student gains, an NYU study attempted to determine the academic growth of students with disabilities from an analysis of individually administered assessments conducted by SBST personnel during initial and triennial evaluations. We could not determine progress for 94% of the students in our 142-student random sample because of lack of consistency between initial and re-evaluation assessments. Either different tests were used, or different subtests were sampled, or different metrics were employed for reporting performance, such as age-equivalent versus grade-equivalent scores. (A recent study by the City Comptroller's Office reported a similar inability to determine progress because of the lack or inconsistency of comparable data.)

Therefore we cannot cite evidence suggesting how students placed in special education settings in New York City are benefitting from their education. The data we can marshall suggests limited, if any, gains in academic achievement, and those data are dependent on measures that may not be relevant to the standards and goals we need to set for students with disabilities.

Segregation of special education students

A very high percentage of New York City students are educated in self-contained classrooms. Nationally, an average of 19.8% of all students with disabilities, ages 6-11, were educated in separate classes. The corresponding figure in New York State was 41.2%; in New York City, the percentage is above 60%. In our community school districts, 56% of all students with mild and moderate disabilities are educated in self-contained classes.

Worse, re-evaluations of students with disabilities placed in segregated environments, either for a scheduled triennial or because teachers or parents requested a review, resulted in a less restrictive placement only 7.9% of the time.

Data on the percentage of children mainstreamed illustrate another aspect of the problem of disproportionate placement in segregated environments, or violation of the least restrictive environment (LRE) mandate. According to OER data, only 16.4% of all special education students in community school districts have mainstreaming opportunities. This percentage does not include students in District 75 programs, who have far fewer such opportunities available to them.

The combination of the unusually high percentage of students with disabilities enrolled in self-contained classes, coupled with the indications that few are ever placed in less restrictive settings and only one in six receive mainstreaming services, suggests the existence of a dual educational system within the New York City schools. One system serves nondisabled students, the other serves students with disabilities. Few of the latter ever get the opportunity to return to general education, even for a brief time.

Racial and ethnic disproportions in special education identification and placements

In the 1960's and early 1970's, numerous lawsuits challenged the over-representation of students of color in special education. The nondiscriminatory assessment component of Public Law 94-142 was intended to minimize the problem of inaccurately classifying many minority group students as educationally handicapped. But analysis of the enrollment of special education students in New York City schools suggests that reducing the percentage and number of students of color in special education has not been achieved. The data also suggest, however, that the disproportionate representation of black and Hispanic students in special education programs is not uniform across the city.

This citywide pattern of disproportionate representation can be seen from the data in Table 1. In this table, based on a total enrollment of 640,430 students in all elementary and middle schools during the 1992-93 school year, separate ratios are established in four categories for black and Hispanic students relative to white students. The first row indicates that for each white student on register, there are 1.93 black students and 1.97 Hispanic students. These ratios were developed from the overall enrollment data that showed 118,955 white students, 229,103 black students and 234,018 Hispanic students. The second row presents the corresponding ratios for referrals to special education. The third and fourth rows indicate ratios of the racial and ethnic distributions by resource room and self-contained classes.

The data clearly indicate the nature of disproportionate representation. Slightly more black and Hispanic students are referred than their enrollment numbers predict, but many more are placed in self-contained classes. Black students are placed in self-contained classes almost twice as much as they would be if placement were based on their percentage of enrollment. For every white student, there are 1.93 black students in the total population; but for every white student, 3.74 black students are placed in self-contained classes. A similar pattern, though somewhat less severe, is evident for Hispanic students.

TABLE 1

Ratios of Ethnic Representation in Elementary and Middle Schools 1992-1993

	White:Black	White:Hispanic
Enrollment	1: 1.93	1: 1.97
Referrals	1: 2.31	1: 2.26
Resource Room	1: 1.80	1: 1.77
Special Classes	1: 3.74	1: 3.31

The disproportion of students of color in self-contained classes is not uniformly distributed across all schools. Instead, there is considerable variability in the ratios of white students to black and Hispanic students, depending on the racial/ethnic composition of the schools students attend. Tables 2 and 3 are structured identically to Table 1, but with different data. In table 2, data are presented on the racial/ethnic distributions for 342 elementary and middle schools with fewer than 20% black student enrollment. In Table 3, data are presented on racial/ethnic distributions for 482 elementary and middle schools with 20% or more black student enrollment.

TABLE 2

Ratios of Ethnic Representation in Elementary and Middle Schools with less than 20% Black Student Enrollment

	White: Black	White: Hispanic
Enrollment	1: 0.25	1: 1.22
Referred	1: 0.49	1: 1.44
Resource Room	1: 0.44	1: 1.20
Special Classes	1: 0.97	1: 1.80

TABLE 3
Ratios of Ethnic Representation in Elementary and Middle Schools with more than 20% Black Student Enrollment

	White: Black	White: Hispanic
Enrollment	1: 7.78	1: 4.62
Referred	1: 7.89	1: 4.84
Resource Room	1: 5.94	1: 3.56
Special Classes	1: 11.69	1: 7.75

Table 2 data indicate a four-fold imbalance in the rate at which white and black students are placed in self-contained classes. In schools containing fewer than 20% black student enrollment, the black student referral rate to self-contained classes is four times the rate for white students.

In the schools in Table 3 that enroll a minimum of 20% black students, there are 7.17 black students for each white student on register, but a 3:2 ratio obtains for special class enrollments. Thus there is a substantial difference in the rates at which black students are placed in special classes in schools of differing racial/ethnic composition. Four times (or 400%) as many black students are placed in special classes in schools with less than 20% black enrollment; 150% as many black students are placed in special classes in schools with more than 20% black enrollment. The pattern for Hispanic students is similar but less severe.

These data present the current breakdowns in schools that differ in their racial and ethnic distributions, but do not explain why the distributions exist. What they do demonstrate is the extent of disproportionate representation of students of color in the city's special education settings, and the strong patterns of over-representation in self-contained classes.

Inappropriate referral and classification

Finally, there is the persistent problem of the referral to and placement within special education of many students not because of disability but because their needs are not able to be met within general education. In a 1992 study, we surveyed New York City classroom teachers who referred students for special education evaluation. Only 9% of the 171 teachers who responded indicated that the students they referred worked well in large-group class settings; 56% indicated that the students worked well in small groups.

In the same survey, we asked teachers' views about their expectations of the academic progress of the students they referred. Of 134 teacher respondents, 69% thought students would progress better in self-contained special education classes. In a similar survey in two community school districts, 81% thought that referred students would make better progress in a special education class. These results indicate that general education teachers believe that the smaller class size of special education is a major instructional benefit, and they are not optimistic about the benefits of general education classes, for students they perceive as at-risk of academic failure, as long as classes remain large and supporting resources are increasingly strained.

Other data we have gathered suggest that in New York City, many students who are classified as learning disabled may not be. In our 1985 study, only 16% of 133 children classified as learning disabled and for whom both IQ scores and achievement data were available had 50% or higher discrepancies between expected and obtained achievement, the criterion stipulated in state regulations as defining learning disabilities. In our 1992 study, we found that only 15% of our sample of 175 students demonstrated the combination of average IQ and dispersion, or scatter, in their profile of cognitive abilities that met the clinical definition of learning disabled.

This brief review of past and present studies of special education in New York City suggests that we are sustaining, at great cost, a separate system of education for students with disabilities that does not produce adequate academic growth for most of those students, that segregates them in predominantly restrictive placements violating federal and state mandates, that disproportionately places students of color in self-contained settings, and that refers and places many students in special education settings who do not belong there. Sustaining such a faulty system imposes severe constraints not only on students with disabilities but on all the students, teachers and administrators within our city schools.

III. Guiding Assumptions

The following ten assumptions structure the design and recommendations that follow. We also propose them as a guide to implementing a more effective system of teaching and learning for all students.

1. Major changes at the school level are necessary to help improve teaching and learning, and the resulting instructional outcomes, for all our students.

2. Many students are currently referred to special education not because of disability but because general education's resources are too limited to meet their needs and the needs of their teachers; others are referred because of limited English rather than disability. If general education could be reconceptualized and restructured to meet the needs all children bring to schools, including language needs, significantly fewer students would be referred to special education.

3. Improving teaching and learning for all students requires making the current boundaries between general and special education far more fluid, to produce a school climate, culture and learning environment that uses resources flexibly to address the educational and developmental needs of all students.

4. Whenever possible and appropriate, and as mandated by federal and state law, all students with disabilities should be educated in schools close to their homes and be held to academic standards commensurate with their peers.

5. The current system of evaluation supports a clinical and compliance approach to classification and placement, driven by non-instructional assumptions that identify problems within the student. To be effective, all evaluation must be instructionally based and must focus on how to help teachers teach and students learn more effectively, by building on students' strengths as well as needs. Instruction and learning outcomes should inform and guide all evaluation, placement and teaching strategies.

6. Individual Education Plans (IEPs), required by federal and state law for all students with disabilities, must be instructionally focused, written to inform and support the practice of classroom teachers, responsive to children's native language, and accessible to everyday instructional use.

7. Securing parents' due process rights and their involvement in instruction and advocacy is critical to improving educational outcomes for their children.

8. Incentives and disincentives, including fiscal resources, must be reconfigured and focused on schools to improve schools' capacities to meet the learning needs of all students, particularly those with disabilities. All other accountability mechanisms must be based on student educational performance.

9. Providing schools with additional resources and the flexibility to meet student need involves significant provision of professional development defined, organized and supervised by school staffs at the school site.

10. Finding the checks and balances between school-generated flexible learning environments and systemic mechanisms for insuring equity and accountability, in provision of resources and in educational outcomes, is critical to improving teaching and learning for all our students.

IV: The School-Based Model

Special education has always been separate education in New York City public schools. When special education was centrally run, children evaluated as disabled were almost never assigned to their neighborhood schools, or were removed from those schools once their disabilities were identified. Placement meant assignment to a school or program usually distant from a child's home or neighborhood, often involved extensive bussing, and resulted in instruction in a specialized environment.

When special education *instruction* for students with mild and moderate disabilities was decentralized to the community school districts in 1986, evaluation and placement functions remained centralized. Thus instruction was separated from evaluation, which remains the responsibility of 32 Committees on Special Education (CSEs) located in community school districts but administered by the central Division of Special Education. Placement is similarly fragmented; students with mild and moderate disabilities are placed by CSEs into community school districts or into high schools. Students with severe disabilities are evaluated by CSEs but placed by District 75 of the Division of Special Education.

This multiple fragmentation has many negative effects. Separating assessment from instruction makes assessment a formal clinical procedure divorced from student learning settings and learning experiences. Separating placement from instruction divorces placement from site-based knowledge of school programs, teaching styles and classroom capacity to meet student learning needs, all the components necessary to appropriately place students. Finally, this fragmented, procedural and compliance-driven system has no incentives to keep children in their home schools. The result is that most special education students, including those with mild and moderate disabilities, are bussed to school outside their neighborhood, at considerable transportation expense and with significant loss of learning time.

To reduce this fragmentation of instruction and evaluation, and to improve teaching and learning in schools across the city, we recommend the development of what we call the school-based model. This model involves a rethinking and restructuring of school and classroom organization, instructional and evaluation strategies, and fiscal allocation policies. The goal of this comprehensive change is to focus all schooling resources on improving instruction to produce better outcomes for all students and particularly for students with disabilities. We see the individual school, rather than district, regional or central organizations, as the key site of this reconfiguration, and school staffs, particularly classroom teachers, as the key actors carrying it out.

The first step in this reconfiguration is to merge the school-based resources now split into special education and general education allocation streams. (The legal, procedural and fiscal barriers to merging resources at the school level are discussed in a series of notes following the report's Conclusion. Additionally, a legal analysis and a fiscal assessment of *Focus on Learning*, both written by national experts, are included in the Appendices.) General education resources are allocated by formulas driven primarily by student numbers. But special education resources are driven by placements along the continuum of special education services. What this means is that though the federal government has defined a set of disabling conditions that could adversely affect students' educational performance, classifying a student under one or more of those conditions does not drive special education funds. Instead, the student must be assigned to a special education placement or service to draw funding. In New York State, these placements form a continuum that begins with services provided in the least restrictive setting, the general education classroom. Services can include related services such as speech and counseling, consultant teacher, or resource room. The next, more restrictive level includes special or self-contained classes within a general education setting for all or part of the school day. More restrictive placements involve separate classes within a program cluster or within a school composed solely of self-contained classes. The most restrictive settings involve residential placements or home or hospital instruction.

In New York State, unfortunately, funding supports more restrictive placements; the more self-contained and isolated the placement, the more funds that placement generates. In New York City, there are relatively few placements in the general education classroom, the least restrictive level of the continuum. The New York City school system places a much higher percentage of children with mild and moderate disabilities in self-contained classes than other school systems, both in New York State and in the rest of the country.

We propose merging the total amount of funding available at the school site, both those funds that support the continuum of special education placements for students with mild and moderate disabilities, and those funds allocated for compensatory education and other supplemental supports, for flexible instructional use in meeting all students' needs, with appropriate safeguards to preserve the intent of special education funds.

These special education funds, along with other personnel and financial resources, would form an enrichment allocation that each school would use to create a more effective teaching and learning environment for all students, particularly for students with disabilities and students at risk of academic failure. Ultimately, what we hope to see is a system in which each school shapes its instructional environment to best meet all its students' needs, combining resources, including special education funds, that do not follow individual students but meet their needs through a variety of school-based instructional responses.

How would this work? (The complexities of establishing baseline funding, guaranteeing that funding for schools and districts and moving towards equity of allocation are suggested in the *Note on Funding and Cost Savings*, page 56 below.) For example, consider an elementary school that contained, in the 1994-95 school year, 750 students. Approximately 10% of the school, or 75 students, are categorized as mildly and moderately disabled and distributed across four self-contained classes: two MIS I classes, one MIS II and one MIS IV class, and two Resource Room "pull out" classes. (Children with more severe disabilities would not be served in this school, but in a program in a separate school operated by District 75, which is responsible for the education of children with severe disabilities.)

Computing *only* the cost of teachers and program para-professionals, and using average teacher salaries, those 75 special education students would generate $320,000 in direct personnel resources. (This $320,000 does not include the cost of special education guidance counselors, speech teachers, supervisory or administrative staff, professional developers or alternate assignment para-professionals, all of whom the Division of Special Education assigns by formulas based on class registers or, as in the case of alternate assignment para-professionals, according to specific IEP requirements.)

The school would receive its formula-driven general education allocation for all its students. But its special education allocation, the $320,000 which would have funded the specific self-contained classes and resource room services, would be provided as a lump-sum allocation. If the school, as part of its instructional plan (see below), decided that the best way to meet the needs of its students with disabilities was to reproduce the pattern of self-contained classes and resource rooms, the school would use all of its allocation to recreate its previous special education configuration. But the school could also choose to use its allocation for different patterns of classroom organization and staff deployment.

All the school's supplementary allocations, including federal and state compensatory education funds (Title I and PCEN, for example, as well as funds to promote mainstreaming), should be combined with the allocation generated by the special education funding stream to create a comprehensive enrichment allocation that is focused on the needs of all the school's most precarious students. Thus funding would continue to address the needs of students with mild and moderate disabilities, but rather than reflexively creating instructional settings *outside* regular classrooms, funds

funds could be used to enrich mainstream classrooms and to improve the educational environment for *all* students. To insure that the educational needs of students with disabilities and all other at-risk students are met, the enrichment allocations would come with a set of stipulations for how they could be used at the school site.

One stipulation, for example, would require each school to *informally* assess all those students that teachers or parents perceive as potential candidates for future academic or behavioral difficulty, within the context of the school's standards, educational approach and specific instructional plan (see below). This informal assessment should focus on teachers' judgements of students' skills levels, learning characteristics, and social-emotional development, and be particularly responsive to students' strengths and capacities, including familiarity with languages other than English. The informal assessment should also examine the fit between the student and the specific classroom environment.

All schools would be required to develop a school instructional plan that used the comprehensive enrichment allocation to organize teaching and support to best meet the needs of each school's most precarious students. The enrichment resources could be used to create flexible groupings, multi-age settings, smaller classes for children with particular needs, cooperative learning groups, peer- and cross-age tutoring, a range of strategies that offer support for classroom teachers and provide small-group or individualized instruction (including the Consultant Teacher model), counseling assistance for particular behavioral needs, and assistance with speech and language problems.

Districts would distribute enrichment allocations to schools along with a broad menu of recommended instructional and intervention strategies that schools could use to reorganize and improve their school organization, instruction and student support efforts. As schools develop their instructional plans, they would incorporate the strategies most appropriate to the educational and developmental needs their informal assessments identify. Each school's plan would be reviewed with, and ultimately approved, by the district superintendent, and supported by district personnel.

To initiate this school-based model, schools would also decide, as they develop their instructional plan, the settings in which those students originally placed in self-contained or resource room classes could most effectively learn. We need to distinguish, throughout this report, the *transition* or *start-up* decisions necessary to *begin* this reconfiguration, from the functioning of such a new system *once in place*. The *Notes on Transition*, page 62 below, address some of the specific problems involved in moving from the current system to what we propose, including some suggestions for phasing in such a transition. In this section we are more concerned with how teaching and learning would be organized once schools became part of the new system, rather than with the transition from current practice to the new modes we recommend.

This report does not assume that all students currently placed in self-contained or resource room settings will be best served in general education environments. Instead, we believe that many of the students assessed as mildly and moderately disabled and referred out of general education are not disabled by legal definition, but are handicapped by poor academic performance, inadequate learning, and school instructional failures. Additionally, we believe that if teaching and learning in general education were *significantly* reconfigured and enriched, meeting most students' needs would not require segregated settings.

Third, we believe that individual schools are the most appropriate sites for decisions about how best to meet students' needs, including the needs of most of those students originally placed in self-contained or resource room classes. If, after consultation with parents and the district, schools decide that separate classes are the most appropriate learning setting for some segment of their self-contained student population for some portion of the school day, then schools would choose to use some of their enrichment allocation for self-contained classes.

We are advocating an administrative and funding structure that encourages fluidity *across* the currently rigid boundaries separating general and special education, as well as *within* special education. Our model also envisions far more fluid, flexible and supported transitions, or articulation, between elementary, middle and high school settings.

School-specific enrichment allocations should provide significant additional resources to reorganize instruction. Moreover, once a baseline year is established, schools and districts should continue to receive their baseline funding, with annual cost increases, for a specified period such as five years, during which instructional plans are developed and instructional resources reconfigured to meet all student need. Depending on the extent to which schools choose to dissolve self-contained classes or Resource Rooms, teachers from reorganized classes could become part of the overall school staff, thereby lowering student/teacher ratios and reducing class size.

These teachers could also staff multi-age classes, small classes or small-group settings within classes for specific instruction, individual instruction within classes, or limited-term pull-outs such as Reading Recovery. Or these staff could organize cooperative learning groups, structure peer- or cross-age tutoring, provide support, or become Consultant Teachers working in a variety of classes to help classroom teachers meet specific student needs.

To insure effective instructional response to student need, we recommend the creation of an Instructional Support Team (IST). The IST should be composed primarily of classroom and cluster teachers, supplemented by supervisors, guidance counselors, clinicians who were formerly members of School-Based Support Teams and assigned to their local schools as support staff, as well as related service providers such as speech teachers and counselors. Though there should be a stable membership cohort, the composition of ISTs should vary depending on the nature of the particular problem presented by classroom teachers.

The IST's main function is to provide informal, rapid-response intervention to help classroom teachers resolve particular instructional or behavior problems with students. Teachers experiencing difficulty must be able to request assistance from one or more of the core staff designated as IST members, and response must be quick and effective. In some instances, a student's poor academic performance may prompt a classroom teacher to ask for IST consultation; in other instances, a student's particular behavior may impel a teacher to seek advice. Parent concern or communication with parents may also shape a teacher's decision to ask for IST help. Whatever the cause, IST response must be swift and appropriate.

Often, consultation with an initial IST member, and perhaps an informal classroom observation, may prove sufficient. For more difficult problems, consultations with several members of the school's IST cohort, as well as a number of classroom observations and a group conference, may all prove necessary. But the IST's priority is on *rapid response* to help the classroom teacher develop the instructional and organizational changes to reduce or resolve the student's learning or behavioral difficulties.

IST interventions must be *informal* as well as rapid, to maintain the focus on nonbureaucratic classroom interventions. Therefore the ISTs must *not* develop formal request procedures, scheduling, written records or paper trails – the paraphernalia of formal evaluation. Instead, the ISTs must function as classroom teachers' frontline support, an informal, experientially-based collegial consultation resource. The goal of the IST is to help the school staff provide the instructional settings and supports that most effectively respond to students' learning needs and meet teachers' needs as well, so that what gets targeted for "fixing" is school and classroom organization rather than the student.

Developing the school's instructional plan is a key all-school task. To make the transition from current practice to a reorganized school that uses its enrichment allocation to shape more effective teaching and learning structures, school staffs will need to informally assess all students with disabilities and all students teachers perceive as potential candidates for future academic difficulty. Such assessment should be informal, instructionally based and adapted for each student. A variety of approaches are possible, such as curriculum-based assessments, criterion-referenced tests, rating scales, observational and anecdotal logs and records of students' academic and social performance, or any other techniques school staffs find appropriate. Many schools have working groups, such as School-based Management Teams or Pupil Personnel Teams, that have developed the skills and experience to help their colleagues shape an instructional plan that reorganizes teaching and support to better meet student need.

We recommend three structural principles to insure that ISTs help schools meet the learning needs of all their students. First, we recommend that the IST have no power to *formally* evaluate students or classify them as disabled. If, after the IST and the school have exhausted their instructional and support strategies and, in the judgement of the IST, the student's learning needs are still not being met effectively, the IST can refer the student to a district-level multi-disciplinary CSE team for formal evaluation. (See *Implications for Districts,* page 30 below, for discussion of district level review, evaluation and placement functions.) The referral form should be used to document the variety of instructional interventions and adaptations the classroom teacher and the IST have attempted, and the resulting experience, for every student referred to the district CSE for formal evaluation. Our model also assumes that districts would develop effective forms of technical assistance for ISTs to help them carry out their instructional, *pre-referral* functions.

Since our IST design does not preempt the parental right to a formal evaluation, parents maintain their right to request a *formal* review, at any time, without consulting the IST, if they so choose.

Second, any IST or parent referral of a student to the district's formal evaluation team that results in the student being placed in a different school will impose a fiscal disincentive on the referring school. The cost of educating that student in the new instructional setting, which may well be higher than the cost of educating the student in his or her home school, must be borne by the home school. (If a student moved, for example, from a general education setting with a 30-1 student/teacher ratio in one school to a more individualized setting with a 6-1 student/teacher ratio in another school, the cost differential could exceed $5,000.) We are recommending such a stringent fiscal disincentive to maximize the pressure on ISTs and school staffs to use their enrichment allocation to reconfigure instructional strategies to meet students' needs *in their own schools,* and early in the student's schooling career, rather than refer students out of the school to get the help they need.

Third, we recommend that, for as long as standardized assessment scores are reported and used as indicators of school instructional effectiveness, the scores of all students, including those assessed and classified as in need of special education (except students with severe disabilities or mental retardation), be included in the school's aggregated test score results.

Another of our priorities is that, particularly at the elementary school level, students should be served by their home school unless the most appropriate placement demands a more distant setting. (There are still, for instance, relatively few barrier-free schools in each community school district.) A variety of student assignment mechanisms have weakened the capacity of school staffs to assume responsibility for *all* the students zoned for their neighborhood elementary or middle school. All our recommendations, particularly those prohibiting formal evaluation at the school level, imposing significant fiscal disincentives on the referral of students out of the school, and requiring that all students' test scores be included in their school's aggregated results, are also designed to reassert the primacy of the neighborhood school and the home district in meeting students' instructional needs, particularly the needs of students with disabilities. (But see the brief discussion about student choice in *Notes on Transition*, page 62 below.)

Another principle critical to our design is the necessity to provide classroom teachers with a wide range of supports. *The primary purpose of the enrichment allocation is to insure that classroom teachers are not required to meet the needs of students with disabilities or students at risk of academic failure without a range of adequate instructional and non-academic supports. The primary purpose of the IST is to help classroom teachers develop appropriate instructional strategies.* But the enrichment allocation can't simply create those supports; schools must collaboratively develop the instructional organization that best meets student and teacher need. Only genuine school-based planning, driven by teachers, supported by supervisors, and continuously reinforced by the work of the ISTs, can insure that classroom teachers have the instructional and non-academic supports necessary for effective teaching and learning.

Creating effective instructional and non-academic supports for classroom teachers also requires extensive professional development designed and implemented by school staffs. Few schools will initially possess the knowledge, experience and sophistication necessary to develop an effective plan to diversify their instructional organization. Continuous interaction between the school and the district's technical assistance capacities, supplemented by new resources for professional development from a significant new systemic allocation, should develop a variety of resources that can be structured, adapted and utilized by school staffs to support their professional growth.

Such professional development should help teachers recognize and address the needs of students with disabilities; should provide opportunities to develop and try out new teaching patterns and interventions in school and classroom settings; should enhance staffs' repertoire of teaching skills, substantive knowledge, communications skills and decision-making capacities; and should develop the capacity to assess the school's short-term and long-term outcomes. The city's higher education institutions must also develop the capacity to contribute effectively to this intensive, school-based professional development effort.

Lodging responsibility for decision-making, professional development and instructional planning *at the school site* to improve the teaching and learning of more than one million students may also force the creation of an effective accountability system. Given the extent of resources and choice of instructional strategies our recommendations grant to local schools, school staffs and supervisors will wield a considerable amount of new power and discretion. What mechanisms might help insure that schools use such resources and power to benefit *all* students, particularly those formerly served in self-contained classes?

Years of negotiation and litigation in the *Jose P.* case have produced *compliance or procedural accountability mechanisms* that attempt to guarantee students' and parents' due process rights to timely provision of an appropriate education. State and city fiscal monitoring have generated *fiscal accountability mechanisms* that attempt to insure that federal, state and city funds are spent according to law, regulation or mandate. But few mechanisms attempt to insure *educational accountability*, which we define as efforts to provide instructional strategies, at the school site, to meet student learning needs; to assess the effectiveness of those strategies in terms of student learning outcomes; and to reconfigure those strategies based on assessments of their relative effectiveness. If schools and districts currently employ very few educational accountability measures, how can they be held accountable to effectively use their enrichment allocations?

The history of the New York City schools' treatment of students with disabilities suggests that we cannot simply give local schools the resources and the discretion to reconfigure their instructional organization and trust that they will effectively respond to all students' learning needs. Many will, but some, perhaps a distressingly large number, will not. We need educational accountability mechanisms to identify such schools, reverse their unsound practices and, if necessary, find alternative placements for students whose positive learning outcomes are threatened by such practice.

The *Notes on Accountability*, page 51 below, detail the schema we propose. Briefly, we recommend the creation of an independent Accountability and Quality Assurance

Office, run by a director selected by the Chancellor, representatives of the *Jose P.* plaintiffs, and representatives of public interest education groups such as the Educational Priorities Panel or the Fund for New York City Public Education. The director and staff of the Accountability and Quality Assurance Office (AQAO), whose salaries would be provided by the Board of Education, would initially assess the efforts to phase in the school-based model, focusing particularly on school and district practice, the nature of schools' instructional plans, and the resulting outcomes for students at risk of school failure and students with disabilities.

This new office would be responsible for providing periodic reports to the Chancellor about the quality and effectiveness of local, district and systemic instruction and learning outcomes, particularly for the most precarious students. Included in the periodic reports would be school and district-focused recommendations to correct particularly harmful or limiting educational practices, as well as broader recommendations to increase the effectiveness of teaching and learning in schools and districts phasing in the school-based model. The Office would meet regularly with the Chancellor's staff to discuss its findings and the administration's responses, and would also meet periodically with representatives of the *Jose P.* plaintiffs. The Office would be required to make regular public reports of its findings and recommendations, and would maintain a status similar to the status of the independent Special Commissioner for Investigation.

The Accountability and Quality Assurance Office would also recruit, establish, train, supervise and support district-level Parent Advocacy Teams in every community school district, as well as in the Division of High Schools and District 75. These teams would be responsible for ensuring that parents are informed about their right to demand formal evaluation at the district level and, if their children are assessed as disabled, timely placement in an appropriate educational setting in the least restrictive environment, with priority on home school and district. (Schools would retain their primary responsibility for informing parents of their rights; these teams would supplement the information schools are obligated to provide with additional advice, support and advocacy protections, and would also provide information about effective special education programs in other districts.)

The Parent Advocacy Teams would provide an informal appeal mechanism for parents or school staffs convinced that students' needs were not being adequately met or that students' and parents' due process rights were being violated. Teams would also be trained to help parents access the mediation resources provided by the New York State Education Department in situations where experienced third-party mediation might help to resolve differences between parents and district CSEs without recourse to expensive impartial hearings. But the teams would also ensure that parents understand their option to seek impartial hearings when they decide that their disputes are unresolvable.

These district-level teams would also function as an early warning system to the central Accountability and Quality Assurance Office about problematic school or district performance, particularly patterns of inadequate response to students with disabilities or students at risk of school failure. Teams would be responsible for recommending that the Accountability and Quality Assurance Office conduct program reviews of schools or districts whose persistent practices violated parents' rights or proved consistently harmful to students with disabilities.

The composition of these teams should include parents, members of public interest or advocacy groups, and professionals outside the school system who have particular expertise in educational or developmental areas. It is important for teams to solicit members from institutions, such as universities and hospitals, that house professionals engaged in educational and behavioral assessment and research into the improvement of educational and behavioral outcomes of persons with disabilities. All team members should be appropriately compensated for their services.

Implications for Districts

Our proposals would change the roles and functions of community school districts considerably. Just as the School-Based Support Teams would be dissolved, and many of their former members would become responsible to school principals as part of school support staff, other former SBST members would become part of district-level Committees on Special Education(CSE). Each CSE would become part of community school district administrations and report to community school district superintendents, as is the case in most school districts outside New York City.

The formal evaluations now conducted by School-Based Support Teams and district-level CSE Review Teams would be conducted *only* by district-level CSE teams, after referral to the district. *Only* district-level CSE teams would have the authority to formally evaluate and classify students, and *only* the district would have the power to recommend students to placements other than their home school.

District-level CSE teams would use the information documented on the referral form about the instructional adaptations developed by the classroom teacher and the IST as an integral part of their formal evaluation, since such data provide the critical evidence that district-level teams need when formulating educational recommendations. But the district-level *formal* evaluation would focus solely on the student, using both clinical resources and observations and discussions with staff *at the school site* to investigate the students' learning needs, the existence and nature of possible handicaps, and the most appropriate instructional setting for the student. Given their particular strengths and expertise, some former SBST members working as school support staff might be asked to do selected formal evaluations by the district-level teams.

Classroom teachers and ISTs would be required to specify the instructional adaptations and interventions they had attempted as part of the referral data submitted to the district. ISTs would be encouraged, prior to referral, to request assistance from the district in identifying and providing appropriate instructional or behavioral interventions for particular students. The goal is to insure that through the ISTs, schools use all their capacity to attempt to meet student need, including tapping district resources, before resorting to a formal referral.

Two overarching principles should guide formal evaluation and classification decisions by CSEs at the district level. First, each classification should follow the state's definition for the appropriate disability. Second, when district teams assess any form of disability, they should also assess the extent to which the disability results from social, cultural or economic disadvantage. Recent studies indicate that poverty is a far larger contributor to the likelihood of a student's referral to special education than any disabling condition. Other studies suggest that, for particular categories of classification such as learning disabled, immigrant status and home language other than English contribute substantially to the likelihood of student referral. We believe that if formal evaluations included attempts to ensure that social, cultural and economic disadvantage were *not* the primary causes of classification, the over-representation of male students of color, as well as the over-representation of students whose first language is other than English, might be significantly reduced.

Placement of students after the district evaluation team arrives at a classification would also be a district function. Just as, under our proposals, the neighborhood school would become responsible for attempting to meet the educational needs of all its zoned students, the district would become responsible for attempting to meet the educational needs of all students residing within its boundaries. Therefore districts should set a high priority on placing, or maintaining, students with mild and moderate disabilities in their local schools with appropriate supports and services, and ensuring that each school develops the expertise, especially at the supervisory level, to provide effective instructional programs for students with special needs.

Currently students with mild and moderate disabilities are generally *not* placed in their local schools because such placement is not a priority for CSEs, which are focused on fulfilling legal stipulations about functional and age grouping and insuring that student classification is matched by the next available slot, no matter where that placement is located. But bussing students to non-neighborhood schools costs at least $2,000 per year per student. If a typical district had two thousand students classified as mildly and moderately disabled, and one quarter of those students were bussed to non-neighborhood schools, the failure to make home-school placement a priority imposes transportation costs of at least $1 million on the city and state. (These state and city funds should be recaptured by districts and allocated to schools as an incentive to return students with mild and moderate disabilities to their home schools.)

To reinforce the priority on placement in home schools, districts would face a significant fiscal disincentive for every student with mild and moderate disabilities they place in out-of-district settings. First, the sending district would be responsible for the cost of student transportation to a program in another district. Second, the district would be responsible for the cost of the specific program to which the student was referred. Third, the sending district would be charged an administrative increment to compensate the receiving district for the administrative costs involved in processing the student, and as an incentive to districts to develop their own effective programs. Hopefully, such disincentives to refer students out of district will help insure that districts carry out their responsibility under federal law to provide what IDEA calls "a continuum of alternative placements" within district boundaries.

Schools in several community school districts have developed particular capacities for meeting varieties of more severe student need. Such schools would be encouraged to specialize – that is, to develop particular settings for the needs of students with severe or low-incidence disabilities such as autism, visual impairment or multiple handicaps. (These schools might be barrier-free as well.) Districts would, in collaboration with District 75, encourage the development of these specialized settings by providing a significantly enriched allocation for every student with severe disabilities referred to such a specializing neighborhood school. By financially rewarding such specialization, districts could encourage the development of new, close-to-home settings to meet the needs of the district's students with severe or low-incidence disabilities.

In addition to conducting initial formal evaluations, district CSE teams would also be responsible for conducting the required triennial evaluations, as well as requested reviews. (School staffs, primarily classroom teachers, would carry out the required annual reviews.) The current CSE review teams, as well as the entire structure of the CSEs, would be reorganized under district control. District superintendents would develop the administrative structures that most effectively evaluate students with potential disabilities and integrate their instruction and evaluation. New district CSE teams would be formed from the personnel of current CSE-level review teams, augmented by some former members of the dissolved School-Based Support Teams; former SBST members serving as school support staff may be called upon, periodically, to provide professional services for district level review teams.

In our model, the district is responsible for helping each school use its comprehensive enrichment allocation to meet student need effectively. The district's savings from reduced transportation costs could be another source of resources to help meet student need. The district can help each of its schools develop the most effective ensemble of instructional practices, using the successes of other schools as exemplars.

The district should also help its schools design the use of the new professional development allocations, as well as help them identify and adapt other professional development resources to reorganize and improve teaching and learning. Over time, IST referrals to district-level CSE teams will constitute a profile of the each school's problematic instructional areas. If the district administration encourages its CSE teams to help identify those areas schools need to improve, professional development resources can be targeted to provide the required assistance. Each school's instructional plan can be evaluated against the profile developed from its pattern of referral, as well as from data the district compiles as it tracks the school-level educational outcomes of students at risk of school failure and students with disabilities. (Districts should also develop the capacity to sample the extent and quality of parent satisfaction with their children's educational experience.)

Thus, at the district level, evaluation processes and the lenses they focus on schools' practices can help to integrate instructional improvement and professional development. Districts must exercise a critical leadership role to move towards the new instructional responses we propose.

V. Implications for High Schools

Just as community school districts are responsible for the instruction of students with mild and moderate disabilities, the borough high school superintendencies are responsible for most of these students when they move to high school. But unlike the structures at the district level, the current organization of special education instruction and services within the BOE's Division of High Schools has some of the structural elements we think should characterize the entire school system.

First, both instruction and evaluation are integrated within the Division of High Schools, rather than bifurcated as two separate functions accountable to, and controlled by, two different responsibility centers. Second, fiscal allocations are integrated; funds to support special education instruction and evaluation are allocated to the borough high school superintendencies and then to individual high schools.

Third, the School-Based Support Teams assigned to each high school report to, are responsible to, and are directed by the school's principal. Rather than functioning solely as evaluation units, high school SBSTs do provide some guidance, counselling and other support services to students and teachers in both special and general education settings.

(One remaining bureaucratic obstacle is that high school SBSTs must refer all their findings and recommendations to the 32 centrally controlled CSEs for formal approval of their decisions. Though this procedure is usually reduced to a paper pass-through – high school SBSTs make the key decisions affecting student classification and placement and community school district CSEs simply sign off – the requirement is an artifact of the systemic failure to integrate evaluation and instruction.)

Supervision of both special education instruction and clinical services is similarly integrated. Most high schools have Assistant Principals in charge of special education who are responsible for both instruction and clinical services of students with mild and moderate disabilities. Borough superintendencies have administrators in charge of special education for these students, and the Superintendent of the Division of High Schools has a Director of Special Education within the Division's cabinet.

This integrated structure has produced a somewhat broader range of instructional options for students with disabilities. The high school placements offered to these students, particularly in educational options schools and other selective programs, have increased significantly across the past decade. The Division has also developed a funding incentive to encourage more mainstreaming efforts. The Alternative High School

Superintendency has supported innovations that reduce school size, scale and scope, making instruction more responsive to student need; has developed advisory group sessions that integrate counseling into the school program; and has integrated some special education students into the academic programming of small schools without reproducing separate, self-contained classes.

But significant problems still limit educational outcomes in most of the High School Division's MIS I and MIS II classes. Standardized test score results, the results of Regents Competency Testing, and graduation rates for MIS I and II students are much lower than for general education students. These outcomes suggest that special education in high schools would benefit from significant instructional reorganization. Therefore we recommend implementing our school-based model at the high school level, and merging each high school's general education unit allocation with its special education unit allocation to create a unified, more flexible instructional program with a wider array of responses to student need.

Each high school would be required to develop an instructional plan to meet the needs of those students identified by teachers as in danger of academic failure (as well as, during the initial phase-in period, all students originally placed in self-contained or resource room settings). The instructional and support offerings that high schools could employ to increase their responsiveness to student need include reduced class sizes for specific academic classes, team-teaching, small-group instruction, cooperative learning, tutorial assistance, paraprofessional assistance and varieties of teacher consultation.

Each high school's School-Based Support Team would be dissolved, and the former SBST members would become part of the school's support staff. Each high school would create an Instructional Support Team (IST) to provide rapid-response, instructionally-based collegial consultation and intervention, that would not formally assess, evaluate or classify students. When ISTs decide that, after implementing a variety of instructional responses, the school could not meet a particular student's needs, they would refer that student to the appropriate High School CSE.

We recommend that the Division of High Schools have its own CSE structure, organized within each borough superintendency and the Alternative High School Superintendency, to assess the instructional needs of students referred by school ISTs, to recommend placements, and to carry out triennial evaluations and requested reviews. This CSE structure should operate as the district CSE structure would function in the community school district settings we described. An additional function of the High School CSEs is ensuring that transition planning is developed, across an appropriate timeline, for students with disabilities.

To respond to IST referrals, the CSE would receive and review data about the instructional efforts each school's IST developed, and the corresponding student experience. The CSE clinicians would assess and evaluate the student, arrive at a classification, and consider placement within the range of borough or system-wide programs most appropriate to the student's needs. (We should note that there are relatively few referrals for evaluation at the high school level. There *are* many triennial evaluations, which have become much simpler to carry out because of recent changes in state regulations.)

As we discuss in more detail in the next section, we also recommend that the Division of High Schools be given administrative responsibility for the SIE IV, V, VI, VII and VIII programs serving high school-age students, currently the responsibility of District 75. To ensure that those programs respond effectively to their students, we recommend the creation of a new superintendency *within* the Division of High Schools, to administer these programs, to maintain accountability, and to provide an effective transition to the most appropriate high school setting for all students in, or recommended for, SIE IV - VIII programs.

Parent Advocacy Teams would be organized, at borough superintendency levels, as well as in the Alternative High School superintendency, to insure that parents have the information necessary to exercise their own and their children's due process rights. These teams would also function as borough-wide informal appeal mechanisms, providing counseling and advice to parents and referring particularly troublesome school or borough-wide patterns to the central Accountability and Quality Assurance Office for possible program review.

VI. Implications for District 75/Citywide Programs

Currently almost 14,000 New York City public school students are served in citywide programs organized and run by District 75. These programs, primarily Specialized Instructional Environments, group students in self-contained classes located either in separate schools or in clusters of classes in schools in community districts, in high schools, or in specialized agencies.

Specialized Instructional Environments (SIE) include programs for multiply-handicapped (SIE I) and autistic students (SIE III), programs for high school-age students (SIE IV – Career Development Centers and SIE V – Occupational Training Centers), and programs for severely emotionally disturbed students (SIE VI, SIE VII and SIE VIII), as well as programs for the deaf, blind, hard of hearing and visually impaired. Referrals to SIE III and SIE VII have increased dramatically over the past decade, and students in the SIE VII and VIII categories now comprise 40% of all students in citywide programs.

Although District 75 has developed considerable expertise with these students, many District 75 classroom and school settings are difficult to defend as the most appropriate and least restrictive educational environments for the students they serve. District 75 has been moving some of its self-contained programs out of separate schools and into community school district and high school settings. But even in those environments, students often remain in self-contained classes isolated from the surrounding school.

Moreover, many District 75 programs are actually separate, self-contained schools. Most students placed in Career Development Centers or Occupational Training Centers, for instance, do not benefit from interaction with their high school peers because their programs usually occupy free-standing buildings separate from regular high schools.

While many District 75 programs do provide good educational environments for students with severe disabilities, many District 75 high school programs demonstrate a range of problems. Student attendance is often low, particularly in SIE VII and SIE VIII settings, with many students listed as Special Attendance Register (SAR), which means that they are carried on the school's register but are not attending. Most troubling, several reports, including a recent audit by the Office of the City Comptroller, have demonstrated, there is no way to effectively assess educational outcomes across District 75 programs, both for high school-age and younger students, because there are no outcome data keyed to IEPs or to student educational or behavioral goals. Indeed, throughout all of District 75 (as well as the entire Division of Special Education), there may be *compliance* accountability, but there are no meaningful educational standards to determine *instructional* accountability.

To reduce the restrictiveness of District 75's programs, and to improve program choice and educational outcomes for severely disabled students, we recommend that community school districts be encouraged, with District 75's support, to develop programs for District 75 students, up to 14 years of age, living in each district's residential zone. As districts establish effective programs, parents would have the choice of continuing their children in District 75 programs or enrolling them in district programs, usually much closer to home.

When, under our model, districts have demonstrated that they have established effective mechanisms to evaluate, place and educate students with mild and moderate disabilities, they may begin to establish such programs for District 75 students aged 14 and younger, including those in the SIE I, III and VII programs. Despite the difficulties of merging separate funding streams and overcoming vexing administrative and procedural barriers, several districts are already collaborating with District 75 to develop programs that integrate District 75 students with general education students in programs that combine teaching and support resources.

District 75 should continue to make its considerable expertise available to districts that are developing such programs, and should also initiate contractual relationships with districts to help them plan, develop, provide staff support for, and evaluate these programs. The same fiscal incentives we are proposing to encourage neighborhood schools to provide effective educational environments for zoned students with mild and moderate disabilities should also be offered to encourage development of programs for students with severe disabilities.

Our ultimate goal is *not* to replace all District 75 programs with district-developed comparable programs, but to maintain a *dual sector* to guarantee program quality and provide meaningful parent choice. We are recommending that District 75 evolve into a quasi-BOCES structure that provides technical assistance and support, at negotiated cost and through contractual relationships, to districts and high schools, while maintaining its most effective Citywide programs. If District 75 maintains its most effective programs while new district-based programs are developed with District 75 support and expertise, parents of students currently placed in District 75 SIE programs could choose to maintain their children in those programs or enroll them in new, district-based programs much closer to their homes.

The need to compete with District 75 programs would force districts to attend to issues of quality and effectiveness; otherwise diminishing enrollment would reduce their funding streams and force them to close ineffective programs. The same dynamic would press current District 75 schools and programs to continue to improve their instruction and services and to evolve into less restrictive environments.

As more district-based programs develop, the role and function of District 75 should change, from one of program provider to one of program initiator, developer, collaborator and support for program sites closer to students' homes. (Some of the implications of this change for reducing transportation costs are discussed in *Notes on Funding and Cost Savings,* page 56 below.)

We also recommend that the Division of High Schools be given administrative responsibility for SIE IV, V, VI, VII and VIII programs for high school-age students. Giving the Division the administrative responsibility for these programs will provide a much broader range of appropriate educational placements for students whose options within District 75 are limited when they reach high school age.

We recommend that students with mild and moderate disabilities moving from community school districts to high schools, as well as students with more severe disabilities moving from District 75 programs to high schools, be evaluated by the appropriate high school CSE (see previous section, pages 34-36) for appropriate high school placement. This evaluation should lead to decisions about the most appropriate placement for students in SIE IV - VIII programs, in alternative high school settings, in MIS I or MIS II programs in general high schools, or in one of the general high school tracks, with appropriate supports.

We also recommend that the new Superintendent of High School Special Education be given the responsibility to develop processes of transition planning for all students in special education settings, in response to the IDEA requirement that a transition plan be developed by age 16. (New York State requires that such planning *begin* by age 15.)

To ensure that the SIE IV - VIII programs are effectively managed and responsive to student need, to oversee both appropriate articulation to high school programs and effective post-school transition planning, and to maintain program accountability across the high school system, we recommend the creation of a new superintendency. This new Superintendent of High School Special Education will have responsibility for ensuring the continuation and improving the quality of SIE IV - VIII programs.

A District 75 Parent Advocacy Team should be formed to disseminate information about parents' rights, to advocate when parents' rights are in danger of being violated, to counsel parents about their right to an impartial hearing when issues seem unresolvable, and to recommend, to the Accountability and Quality Assurance Office, program reviews to examine particularly intractable situations.

VII. Implications for Pre-Schools

Federal law providing for the education of children with disabilities, ages three to five, created an entitlement for disabled pre-schoolers in settings where, in most states, no overall public right to, or funding for, pre-school education exists for non-disabled 3-5 year olds. In school districts that don't provide public pre-school education, the federal entitlement for children with disabilities must be exercised in an essentially private market.

New York State law made this situation worse. First, the law allows *only* those agencies (and only certified professionals within those agencies) that provide programs for pre-school children with disabilities to evaluate pre-school children referred for potential disabilities. Thus state law creates the possibility of conflict of interest because agencies that provide placements for disabled pre-schoolers are the only settings permitted to evaluate pre-schoolers with potential disabilities. These agencies, after evaluating the children and classifying their disabilities, then recommend the type, frequency and duration of services the children need, as well as their placement, which is often in their own pre-schools. Thus it is no surprise, as both city and state comptrollers' studies have found, that 75-80% of pre-schoolers diagnosed as disabled receive services from the same agency that evaluated them.

State law has given private agencies providing services to disabled pre-schoolers an incentive to over-refer children who may not be disabled or whose needs may not require the intensity of services recommended. The current law may also encourage parents to accept such over-referral because the recommended programs, including transportation, are entirely paid for by state and city funds, once the classification of disability is made, while most other pre-school options for three- and four-year olds are costly.

What has evolved is a system of private special education pre-schools that identify and serve approximately 16,000 three- to five-year old children with disabilities, while public pre-school programs serve only a few hundred children with disabilities. This citywide pre-school system cost more than $200 million in 1994-95, not including quite expensive evaluation and transportation. Although the state and the city (not the Board of Education) are responsible for meeting these costs, the drain on city and state resources affects the availability of funding for other educational programs.

Local education authorities such as the New York City Board of Education (BOE) must enter this terrain because New York State law makes local school districts responsible for overseeing all evaluation and placement functions for pre-schoolers with disabilities. Thus district-based Committees on Special Education (CSEs) have added

Committees on Preschool Special Education (CPSEs) to provide oversight for evaluation and to approve placement decisions already promulgated by the same private agencies that provide services for the students they evaluate.

The BOE also receives and passes along funding supporting all placements of pre-school children with disabilities. Since the funding comes jointly from state and city allocations, the BOE, through its CSEs and CPSEs, has jurisdictional responsibility and fiscal oversight for what is essentially an evaluation, placement and instruction program operating within the private sector.

Most placements for pre-schoolers with disabilities are in self-contained, center-based programs. Although state law says that services can be community-based, through related services provided at a variety of non-specialized sites such as pre-kindergarten classes, Head Start centers, hospitals or the child's home, or through itinerant services provided by a special education teacher at any of the above sites, more than 95% of New York City children receive center-based services, according to the New York City Comptroller's report. Thus the Board of Education's attempts to meet the requirements of federal and state law to provide pre-school placements for children with disabilities has produced a concentration of center-based placements and services, most requiring expensive transportation, and many not meeting the requirement that children be served in the least restrictive environment.

To complicate the situation further, a group of advocacy organizations and law firms has sued the state, the city and the BOE on behalf of pre-school students with disabilities. The *Ray M.* suit alleges that the pre-school children named as plaintiffs have not been assessed in a timely fashion and in the appropriate languages, have not been provided appropriate placements and services that meet their individual needs, including language needs, and have not been provided appropriate placements and services in the least restrictive environment. If the courts grant the plaintiffs class action status, *Ray M.* could create conditions analogous to those created by the *Jose P.* litigation.

The city and the BOE have developed legislation to improve aspects of this situation, particularly by reducing the potential for conflicts of interest in evaluation and placement and by limiting the propensity for escalating transportation costs. While their solutions may well resolve some problems, we recommend a framework for more comprehensive improvement which would require significant state legislative change.

First, we recommend that in New York City, the responsibility for determining disability among pre-school children, and the authority and funding for evaluating pre-school children for disability and determining appropriate placements and services for them, be assigned to community school districts and exercised by superintendents through their district evaluation and review functions. Districts would be allowed to contract out the evaluation of pre-schoolers with suspected disabilities to institutions with appropriate evaluation capacity – such as hospitals, universities or private testing agencies – as well as to agencies that currently provide placements or services to pre-school children, with or without disabilities. Our recommendation would give districts the responsibility for insuring that the evaluation and placement system provides all pre-schoolers with disabilities with the most appropriate settings in the least restrictive environment.

Second, we recommend that the state expand its funding for pre-school programs to three-year olds (all state-funded SuperStart programs already accommodate four year-olds, and some accept three year-olds). The state should provide sufficient funding to place three-year-olds with disabilities in classes, with appropriate supports, that also serve non-disabled pre-schoolers, so that least restrictive environments are available to those pre-schoolers with disabilities who could benefit from such settings.

Finding available space to fulfill such a recommendation is difficult. One possibility is that the BOE's successful SuperStart Plus program, serving general education children and children with disabilities in the same classroom, could be expanded to meet this goal. Another possibility is the development of cooperative programs with Head Start centers throughout the city. A third possibility involves the use of leased space, which many private sector pre-school facilities currently utilize.

Third, community school districts would be required to maintain lists of BOE-approved private pre-school providers when, for good cause, parents reject placements offered by the district in district-run pre-school programs. These private placements would then be offered.

Fourth, private pre-school placements would be approved by community school districts if a child's severe or low incidence disability required a specialized placement that public programs could not provide.

These recommendations require considerable changes in state regulation and the likelihood of increased state funding to add a general education pre-school component to current funding for pre-schoolers with disabilities. (The savings resulting from eliminating the costs incurred by over-referral of children, as well as from reduced transportation costs, might significantly reduce the amount of new state funding necessary.) These recommendations give new authority and responsibility to community school districts by significantly expanding their pre-school evaluation, placement and instructional functions. But the gains would also be considerable.

First, both the potential for conflicts of interest between evaluation and placement, and the potential for violation of the mandate to place pre-school students in the most appropriate and least restrictive environments, would be significantly reduced.

Second, enriched education would become available to many more pre-school students with disabilities and to other pre-school students in need of early intervention. (Current pre-school programs generally serve students most in need of enriched education.) Such an enriched early intervention program is likely to prove extremely cost effective, for both public education and other public sector services, because of its well-documented positive effects on students' schooling achievements and post-schooling experiences.

Finally, instituting such new public pre-school programs will vastly improve the transition of students with disabilities and students with severe educational needs from pre-school to kindergarten programs.

VIII. Conclusion

All our proposals seek to refocus both special and general education on teaching and learning. Our school-based model merges funding streams and places responsibility for reconfiguring instruction at the school level because we believe that educational decisions are best made closest to children. We also believe that when school staffs exercise decision-making power effectively, and control the resources to carry out their decisions, student learning outcomes improve.

We presented our model descriptively, with recommendations imbedded in the narrative. What follows is a summary of the major changes in structure and practice that our model necessitates. To move from the procedure-driven, bifurcated and duplicative system we currently maintain, to the school-based model we propose, we recommend that the school system:

1. Work to change state funding formulas that currently provide incentives to place students in special education, and in inappropriately restrictive settings. Special education funding allocated to community school districts and high schools for students with mild and moderate disabilities should be census-based – that is, based on the percentage of those students in the total school population. For the 1-2% of students with severe disabilities, state high excess cost aid formulas should be based on state reimbursement for actual costs.
2. Negotiate a state waiver with a provision to maintain, for at least five years, the level of support for special education currently derived from both state aid formulas and regularly calculated annual increases. Negotiate with both state and city sources for a significant additional allocation for the massive professional development necessary to effectively implement the subsequent recommendations.
3. Require community school districts and high school superintendencies to merge special education resources for mildly and moderately disabled students with supplementary general education resources to create a single enrichment allocation for each school. This allocation would include all federal and state compensatory and preventive funding, as well as the resources generated by special education programs for students with mild and moderate disabilities. Such funding should be used, within the context

of broad guidelines, to serve the needs of all students with mild and moderate disabilities, as well as the needs of all students at risk of school failure.

4. Require informal classroom-based assessment of all students at risk of school failure and all students with disabilities. Such assessment must be instructionally based so that learning settings can be best organized to meet students' educational and developmental needs.

5. Establish an Instructional Support Team (IST) in every school, to be drawn primarily from each school's classroom and cluster teachers, and supplemented by supervisors, guidance counselors, support staff, former SBST staff and related service personnel. Since the IST's primary responsibility is to provide quick response to student and teacher classroom difficulty, its specific composition will vary according to classroom needs.

6. Require each school to develop a school-level instructional plan designed to meet the needs of all academically at-risk students. Elementary school plans must emphasize early intervention programs; include counseling, health screening and mental health services; create an effective support system for classroom teachers; and promote the appropriate education of children with disabilities in the least restrictive environment.

7. Provide resources and support to develop school and classroom-based processes of intensive professional development that increase school staffs' capacity to reorganize teaching and learning, so that the educational and developmental needs of all students are effectively met. Districts must also insure that each school has the expertise, particularly at the supervisory level, to provide effective responses for students with special needs. Teacher preparation programs in post-secondary institutions should be reconceptualized to integrate special education training into all courses of study.

8. Transfer responsibility for all formal evaluation and placement of children referred for potential disabilities to the community school districts and the High School Division. Existing CSEs, now a centralized function, should become responsible to community school districts; new CSEs should be developed within borough superintendencies and the Alternative High School Superintendency for students aged 14 to 21. Community school district and high school superintendents should become responsible for both instruction and evaluation, as is the case outside New York City, and should insure that *all* students with disabilities receive timely evaluation and placement and an appropriate education in the least restrictive environment.

9. Dissolve the SBSTs in every school. Some former SBST members will be permanently assigned to their local schools and will become part of each school's support services for students and staff. Other former SBST members will become part of CSE teams at the community school district or high school superintendency level.

10. Empower District 75 to help community school districts develop effective programs for students with severe disabilities, thereby creating choices of District 75 or local district programs for parents. Give the Division of High Schools administrative responsibility for all SIE IV, V, VI, VII and VIII programs for high school-age students. Create a new superintendency *within* the Division of High Schools to oversee these programs and to help insure that all students with disabilities entering high school choose, or are placed in, the most appropriate programs and receive appropriate post-school transition services.

11. Create significant fiscal incentives to educate children in their home schools, both to reduce the inappropriate referral of children to special education, and to provide a broader range of placement options for children with mild and moderate disabilities and children with low-incidence or severe disabilities.

12. Establish an Accountability and Quality Assurance Office to assess the effectiveness of instructional strategies and practices for students with disabilities; provide information to help districts and schools improve educational outcomes, particularly for their most precarious students; identify schools and districts whose practices consistently fail to meet the educational needs of low-achieving students and students with disabilities, and refer those schools and districts to the Chancellor for corrective action; report regularly to the *Jose P.* plaintiffs and the public; and recruit and provide training, supervision and support for Parent Advocacy Teams in all districts.

13. Change current arrangements for educating pre-school children with disabilities by: assigning community school districts the responsibility and the resources to evaluate and place 3- to 5-year-old children with disabilities; working to get state funding for expanded programs for three and four year-olds such as Superstart Plus, to provide sufficient seats for those pre-school children with disabilities who can benefit from such an environment; and allowing placement in approved private pre-schools only when public options don't exist or are inappropriate.

14. Develop a comprehensive evaluation design to assess the effectiveness of these structural changes by focusing on a variety of outcomes, especially outcomes of students with disabilities or at risk of school failure. The evaluation should be initiated when implementation begins.

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These recommendations define a sea change in teaching and learning throughout our school system. A reform of this magnitude also has significant implications for existing administrative and organizational structures. If responsibility for students with disabilities shifts from central authorities to districts, borough superintendencies and individual schools, major structural changes in the Division of Special Education should accompany this devolution.

Since, for example, clinical services would become the responsibility of community school district and high school superintendencies, the central and regional administrative structure of clinical services, as well as the supervisory structure at CSE offices, must be reassessed for redundancy. Since a comprehensive data base will be a critical component of a new accountability effort based on educational as well as procedural outcomes, the Child Assistance Program (CAP) may well function more effectively by being integrated with the OSIS, ATS and UAPC systems. Such integration has clear implications for CAP staffing and functioning at central, regional and district levels.

Other specific examples include allocation and professional development functions. Under our model, allocation and professional development decisions would be made primarily by districts and schools. Therefore maintaining separate centralized allocation and professional development functions may prove redundant. Given the integration our model encourages at the school site, we suggest that almost all functions currently lodged within the Division of Special Education – budget, personnel, facilities planning, and any remaining instructional issues – be assessed for their redundancy, as well as for their overlap with other central BOE administrative offices. Even those functions that respond to federal and state mandates and court decisions might well be handled by other systemwide offices such as the BOE's legal division. A more integrated system at the school level is best served by a more integrated, less duplicative administration.

There may well be a need for a small core group, perhaps reporting directly to the Chancellor or Deputy Chancellor, to maintain systemic expertise in special education areas, to coordinate responses to state and federal authorities, and to make decisions involving equitable disbursement of resources.

Although District 75 would still be responsible for the education of many students with severe disabilities, its overall responsibilities will decrease as it helps districts develop their own programs. But as its student enrollment diminishes, District 75's responsibilities for technical assistance and collaborative planning will increase. Therefore the district's structure and functions must be carefully re-examined to insure an effective fit between its new mission and its current structure.

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We propose new ways to meet the educational needs of students with disabilities and students at-risk of school failure because we are convinced that the current system benefits too few students. As economic conditions worsen, an overburdened and underfunded general education system forces more students into special education, which then serves too many of those students poorly. We must break this cycle; our model offers a direction.

We think that integrating funding and reducing the boundaries between general and special education students will serve both groups more effectively. We think that, across the five-year implementation period we urge, many schools can reorganize their instructional practices to meet the needs of all their students. We expect a significant decrease in the referral, classification and placement of students in self-contained settings, and a corresponding increase in schools' capacity to meet a variety of student needs, as resources once restricted to self-contained classes are used to support and improve teaching and learning across the entire system.

But such success cannot occur if public education's funding is continuously reduced. The resources currently available for schooling in New York City are not sufficient to meet student need. Even before the recent five-year cycle of cuts, New York City schools were spending significantly below the statewide average. We are proposing to reallocate, for more effective use, a citywide school budget already far too limited. If the school system's budget continues to be cut, our model will fail; indeed we believe, and have recommended, that funding must be restored to make our proposals effective.

Many practitioners who support our proposals are convinced that our model cannot be implemented if basic school resources continue to be eliminated. Others argue that our model would prove disastrous because its success in reducing referrals would trigger an effort to reduce funding across the entire system, because the reform would be perceived and implemented primarily as a cost-saving measure. If implementation of our model lowered referrals and increased the quality of education, and the "savings" from such improvements were not reinvested in our schools, the resulting cynicism and despair would scuttle the entire effort. The cycle of competition for scarce resources would intensify. Parents and teachers would again resort to manipulating the system to get help for precarious students. The needs of students in general and special education would once again be pitted against each other.

Reform is rarely cheap; systemic reform of the magnitude we propose will help to enrich students' lives but is unlikely to save money. What we propose is not a quick or easy fix; there are no quick fixes, and if easy solutions were available we would not be struggling with twenty years of accumulated problems. But if we fail to act now, we will continue to consign hundreds of thousands of New York City schoolchildren, both those with disabilities and those at risk of school failure, to limited lives with bleak futures. Transforming our schools to help all students reach their potential requires the commitment and cooperation of all the school system's constituencies. All our children deserve no less.

Notes on Accountability

The basic assumption of this report is that we must refocus both special and general education on the primary tasks of teaching and learning. To insure that such refocusing produces the educational outcomes we want for all students, we need effective accountability structures. But those structures must identify, assess, reward or intervene to improve *educational outcomes* rather than procedural outcomes such as compliance with federal or state mandates, court orders or union contracts. The current system has few mechanisms that attempt to insure educational accountability, and even fewer that work effectively.

We recommend the formation of an independent Accountability and Quality Assurance Office to assess learning outcomes, and school and district practices, in those settings implementing the school-based model we recommend. To insure independence, the director of the Office should be selected by representatives of the Chancellor, the *Jose P.* plaintiffs, and public interest education groups such as the Educational Priorities Panel and the Fund for New York City Public Education. The director would staff the office, with salaries provided by the Board of Education (BOE).

The Office would function as an independent agency within the BOE structure, reporting periodically to the Chancellor about educational outcomes and educational practices in the schools and districts implementing the school-based model throughout the phase-in or transition period. As the model becomes systemic, the Accountability and Quality Assurance Office would assume system-wide responsibilities comparable to those now exercised by the Office of Monitoring and School Improvement. To assure its independence, the Office should enjoy status similar to the status of the school system's Special Commissioner for Investigation.

To carry out this mission, the Office must command a wide range of BOE data about the effectiveness of programs for students at risk of school failure and students with severe disabilities, in addition to the referral, evaluation, classification, service provision and timeliness data now produced by CAP. Consideration should be given to integrating the CAP system with OSIS, ATS and UAPC to produce the range of comprehensive student and school outcome data that these three indicator systems now separately provide. Upgrading CAP to focus its reports on learning outcomes, or integrating CAP with the BOE's other information systems, should allow the Office to assess the range of student outcomes necessary to report to the Chancellor about how effectively the implementation of the school-based model is meeting student needs.

The Accountability and Quality Assurance Office should also periodically report its findings to the *Jose P.* plaintiffs, and must make its reports available to the public at large.

We have also recommended that the Office recruit, establish, train, supervise and evaluate the performance of district-based Parent Advocacy Teams. (The teams should serve at borough levels in the Division of High Schools and in District 75 as well.) These teams would be responsible for making sure the information is disseminated to all parents about their rights to formal evaluation at the district level; and, when children are assessed as disabled, rights to timely placement in an appropriate educational setting in the least restrictive environment, with priority on home school and district.

Teams would also function as an informal district-level review panel to provide an informal appeal mechanism for parents; to help parents access conflict resolution and mediation services; to inform parents about their right to an impartial hearing; and to recommend program reviews to the central Office when particular school or district practice seems problematicfor students with disabilities.

Just as an independent Accountability and Quality Assurance Office is critical to systemic accountability, independent district-level teams, adequately staffed, trained and funded, are critical to educational accountability at the district level.

Team composition should include parents, members of public interest or advocacy groups, and professionals who are independent of the school system. All team members should be adequately compensated for the time they serve. Professionals should be recruited from institutions such as universities and hospitals that house professionals knowledgeable about improving educational and behavioral outcomes of persons with disabilities, and from law firms and other settings whose members have the expertise to help insure due process rights throughout the school system.

Effective exercise of parent accountability roles has been difficult to achieve because parents are so vulnerable to being coopted by teachers and administrators. The parent advocates currently mandated to inform and support parents on district Committees on Special Education (CSE) have been an inadequate safeguard for parental rights and a failure as an accountability mechanism. For a variety of reasons, CSEs have often failed to recruit a sufficient number of parent advocates, and many evaluations and reviews are conducted without their (required) presence. Moreover, those advocates who do attend evaluations and reviews often function more as passive assentors to CSE procedures than as advocates for parents. If parents are to effectively fulfill their information and advocacy roles in the new accountability structure we propose, they must be independent of district, CSE and central administrative hierarchies.

We have suggested that district teams be given the power to recommend program reviews when particularly troublesome school or district practice proves resistant to local team scrutiny. Program review involves an extended on-site visitation, by teams specially trained to focus on the quality of teaching and learning provided at the site, to identify the problems or barriers limiting the effectiveness of instruction. The program review process should be developed and administered by the Accountability and Quality Assurance Office; the New York State School Quality Review provides one useful model.

Notes on Federal and State Requirements and Other Legal Issues

The issues involved in conforming our model with federal and state requirements, court mandates, and contractual obligations are complex and will require the application of considerable expertise. (See *Appendix B: A Legal Analysis of FOCUS ON LEARNING* by Perry Zirkel.) We are convinced that if the *will* exists to move from the fractured, process-driven, educationally ineffective system we currently endure, to the school-based, student-focused, instructionally-driven system we propose, the complexities of conforming to requirements can be resolved.

Federal IDEA requirements for use of the relatively small federal component of special education funding do not seem to pose problems. Recent federal interpretations of IDEA suggest that though IDEA funding must be used for special education purposes, such funding does *not* have to follow specific students. Use of federal funds for the assessment purposes recommended by our model, for example, would meet IDEA guidelines. Since our model would move more students with disabilities into placements and services on the general education end of the continuum of services, while preserving more restrictive settings for a relatively small number of severely disabled students, our model seems quite acceptable within IDEA guidelines.

Next, we must consider how to respond to those state requirements, enacted by legislation or promulgated in regulation, that establish the specific continuum of placements and services and allocate funding based on that continuum. Here federal requirements come to our aid, because New York State's implementation of its continuum has been repeatedly cited, by federal authorities, for non-compliance with the law's mandate to educate students appropriately in the least restrictive environment (LRE). Because our model moves many students into general education settings, implementing such a model would make a major contribution to New York State's efforts to comply with LRE requirements.

Our model does not seek to abolish or change the continuum of services New York State has established. Instead, we propose a reassessment of how student need can best be served *at the school level,* and a corresponding movement of students from more restrictive, self-contained settings to less restrictive, general education settings *with appropriate services and supports.* Therefore a request for a waiver from the state's continuum of services may *not* prove necessary.

However, a waiver from the state's method of allocating funding according to placement does seem necessary; some experts believe that legislative change would be required to provide the integrated funding we recommend. Our model requires the selection of a baseline year and the allocation of that baseline's total of state funding for students with mild and moderate disabilities as the equivalent of a lump-sum allocation. To insure that no students, schools or districts are harmed by the new arrangements our model would put in place, the city and the state must guarantee that base level of allocation for the five-year implementation process, and continue to allocate their regular annual increases as well. This guarantee is critical to insuring that success in providing effective education in the least restrictive environment to students with disabilities, as well as more effectively meeting the educational needs of all students, does not result in a reduction or loss of total funding. Savings from reduced transportation costs must also be returned to the community school districts. Moreover, we also recommend a significant additional allocation for massive systemic professional development. (See *Notes on Funding and Cost Savings*, page 56 below.)

The reassessment of students with disabilities, and their placement in new instructional settings designed to meet their needs, also affects each student's IEP. To the extent that students' IEPs identify specific placements (as opposed to services) along the continuum, those IEPs must be revised to correspond with the new instructional settings devised by school planning teams.

Such largescale IEP revision can be a major undertaking. But since the kinds of changes in IEPs that our model proposes are movements from more restrictive to less restrictive settings for students already classified and placed in special education environments, our reading of state regulations suggests that full CSE reviews are not required. Instead, such IEP revisions could be made by reviews at the school level, similar to the annual reviews we recommend be carried out by the school. (But see Zirkel's *Legal Analysis* in Appendix B, page 56 for a more cautionary view.)

Because we recommend a methodical phase-in involving a carefully selected subset of districts and high schools (see *Notes on Transition*, page 62 below), we think that the development of a plan for the necessary revision of IEPs, at school, district or borough levels, should become a required part of whatever proposal or selection process is established for the transition.

We have been advised by several authorities that transferring authority for the CSEs from central to community school district administrations is within the power of the Chancellor and the BOE. But since *Jose P.* stipulations involve the SBSTs, changing their structure and function would require the agreement of the *Jose P.* plaintiffs. Indeed, our entire model must be assessed by the plaintiffs in terms of how well it accords with their commitments to meet the educational and developmental needs of students with disabilities. Since our model departs so significantly from previous practice, intensive negotiations between the plaintiffs and the Board of Education will be necessary to insure that any new system based on our recommendations integrates the plaintiffs' longstanding efforts to insure that students with disabilities receive the most appropriate education in the least restrictive environments.

Finally, our model will require significant changes in the contractual relationships both the teachers' union and the supervisors' union have negotiated with the Board of Education. Because both unions have long maintained commitments to provide effective education to students with disabilities, we think that our model provides the basis for new teaching and learning relationships, in classrooms, schools and districts, that will enable their members to become more effective teachers, supervisors and administrators.

Notes on Funding and Cost Savings

This section addresses three broad issues: the changes our model implies for state funding mechanisms; how our model's funding incentives and disincentives might work out at the school level; and the potential cost savings that might be realized by implementing our model. (See Appendix C: *Review of Financing Dimensions from FOCUS ON LEARNING,* by Thomas B. Parrish.)

Funding Formulas

New York State funding formulas encourage the over-referral and over-placement of students into special education because the resources they provide to meet varieties of student need in general education classrooms are far too limited. Funding mechanisms that make placement in special education the major source of additional help promote referral and classification of students as disabled when what many of those students need is more support in general education rather than extraction from it.

New York State funding formulas also create incentives to place students in more restrictive settings because the state's formulas are based on the *type* of special service students receive and on the *amount of time* students receive those special services. Moreover, the ancillary and indirect costs associated with referral to, assessment by, and placement in special education – evaluation, transportation, supervision and tracking – increase the cost of each inappropriate referral and placement by thousands of dollars per year per student. These costs rise even more steeply as placements become more restrictive.

The state aid formulas, and particularly the Public Excess Aid formula, should be revised so that funding promotes placement in less restrictive settings, creates incentives to educate students in their home or zoned schools (see the discussion on accommodating schools of choice in the *Notes on Transition,* page 62 below), and promotes help to students in general education settings. The New York State Board of Regents has developed new funding recommendations that move in the direction of what we propose.

Other states have implemented flexible funding formulas to approach these goals. Pennsylvania and Vermont, for example, have moved to a system that provides basic special education funding as a type of block grant to districts, based on their pupil census or total enrollment. Another state aid formula reimburses districts for the more costly education required by students with severe disabilities.

In the Vermont model, a school district may use its block grant funds for any allowable remedial or compensatory services to students. Using an unrestricted block grant, with accountability, encourages the far less expensive provision of pre-referral services to students who, as a consequence, may never have to be formally evaluated, transported, separated, tracked, reported, reevaluated, mainstreamed and decertified. These students can be helped far sooner than if they were forced to wait for referral to special education, and that help comes at a much lower total cost.

Thus our model implies a significant change in state funding formulas. But implementing our model before such changes are accomplished requires at least a broad-based waiver of current state requirements, and perhaps changes in state legislation as well. Essentially, the state should grant the New York City school system a waiver, or the legislature should make the appropriate legal changes, to:

1. Specify a total amount of special education funding, using a baseline fiscal year for the state's Public Excess Cost Aid allocation to the city, and guarantee the provision of that funding, with annual increases, for at least five years, insulating the city, districts and individual schools against any decrease in special education registers that occurs during those five years.
2. Allow that funding to be merged with general education funds and other supplementary funding to more effectively meet student needs, with appropriate safeguards to preserve the intent of special education funding.
3. Allow that funding to be used to meet the needs of students with mild and moderate disabilities now placed in self-contained classrooms, with a variety of services and supports provided by the continuum of services, but predominantly within general education whenever appropriate.

Once such a broad-based state waiver is approved, or legislative changes are enacted, the Board of Education should remove the remaining fiscal and administrative barriers to merging resources at the school level. These changes would allow schools, with community school district or high school superintendency oversight and support, to find the most effective ways to reconfigure teaching and learning to meet their students' needs, using the principles and recommendations we've set out in our school-based model.

School-based funding

Consider a typical New York City elementary school in the 1994-95 school year. P.S. 999 has 750 students of whom 75 have been classified as mildly or moderately disabled and placed in special education settings in the following (beginning-of-the-year) configuration: 24 students in two MIS I classes; nine students in one MIS II class;

nine students in one MIS IV class, and 33 students served by two Resource Room teachers. Capturing only the cost of special education teachers and program-specific para-professionals, and using average salaries for teachers ($40,000) and para-professionals ($15,000), these 75 students would generate $320,000 in instructional costs.

If these students were all in general education classes (at a 28-1 student teacher ratio) *without* additional supports, the cost of their instruction would be $107,000, again using an average teacher salary of $40,000. Therefore the additional cost of those 75 students' current special education is $213,000. That $213,000 is the minimal enrichment allocation that can be used to benefit all the school's students *including* the 75 formerly placed in the configuration described above. (The actual amount of funds available for redistribution is the total special education expenditure or $320,000.)

If P.S. 999, after informally assessing all its at-risk students and reassessing the needs of its special education students, decides to reproduce its pattern of self-contained classes and resource room services, it would accrue no additional instructional benefit from its enrichment allocation. If, however, P.S. 999 decides to keep all its MIS classes but not its Resource Rooms, the school would have $127,000 in personnel resources to reassign for most effective instructional use. If, as another option, P.S. 999 decides to meet the needs of all its students except the 18 in Mis II and IV classes through more flexible instructional arrangements, the school would have 57 more students to integrate into general education, with appropriate services and supports, and approximately $207,000 in personnel resources to reassign for most effective use.

These calculations include *only* direct costs. They do not include the costs of alternate placement para-professionals, special education guidance counselors, speech teachers, supervisory and administrative staff or staff development. All these positions and functions are part of district special education budgets, driven by formulas based on school and district special education registers.

If P.S. 999 decides that, after trying a variety of instructional arrangements, it cannot meet the educational needs of one of its 750 students, the school's IST can refer that student to the district's CSE for formal evaluation. If the district's CSE assesses that student and decides that his or her abilities and needs would best be met by a program at P.S. 888, the district's CSE places that student in P.S. 888. Assume that the cost of the P.S. 888 program is $5,000 more than the cost of educating the student in general education in P.S. 999, because P.S. 888's program has smaller, more intensive classes with more support personnel. Therefore the district would deduct $5,000 from P.S. 999's enrichment allocation (from the total of $320,000) and add it to P.S. 888's enrichment allocation, to pay for that student's instruction.

What we are calling P.S. 999's enrichment allocation is the total cost of its special education students ($320,000) minus what it would cost if all those students were maintained in general education without additional services or supports ($107,000). Under our school-based model, this $213,000 enrichment allocation, and indeed the entire cost of the school's special education component, or $320,000, would be guaranteed for at least five years. P.S. 999 would continue to receive the total allocation of $320,000 no matter where, within the school, its original complement of students with disabilities was served in subsequent years. Even when students formerly placed in self-contained classes graduate from P.S. 999, and if fewer new students are referred or classified as disabled, the school would continue to receive the same allocation.

(We should note that the enrichment allocation is *not* affected by the movement of students with severe disabilities into or out of P.S. 999. Because programs for severely disabled students are funded through District 75 on a cost basis, this funding remains separate from community school district allocations for students with mild and moderate disabilities, and does not become part of P.S. 999's enrichment allocation.)

The goal of our model is to give schools the total use of special *and* general education funding to improve school and classroom organization, instructional strategies and educational outcomes for all students, and to maintain that level of funding as the need to separate or refer out students diminishes.

To carry out this transformation effectively, schools, districts and high school superintendencies need to be guaranteed that their funding will not be decreased because they are meeting their students' needs more successfully by integrating funding and instructional strategies. Therefore, the five-year waiver that maintains both baseline funding and annual increases is an essential component of our recommendations. Because particular conditions, such as an increase in student mobility or a sudden influx of immigrants, can sometimes produce an intensification of disability, we recommend that districts maintain an emergency reserve fund available for allocation to specific schools experiencing legitimate, sharp increases in student need.

Cost Savings

As was indicated in the Introduction, the goal of this report is to recommend changes that improve the educational outcomes of all students, and particularly students with disabilities, rather than to develop ways to reduce the school system's costs. Moreover, our argument throughout this report has been that reduction in schooling resources contributes directly to increasing referrals to, and placement within, predominantly separate and expensive special education settings, because teachers and supervisors cannot marshall the necessary resources to meet student need within general education. Furthermore, increased special education costs are concentrated in evaluation and transportation and do not directly assist students in need. Nevertheless, we think that the implementation of our model might result in some cost savings.

First, as the Conclusion indicates, the integration of special and general education that follows from our school-based model has major implications for the current structure and functioning of the Division of Special Education at central, regional and district levels. To the extent that many positions at each of these levels prove duplicative or redundant, reduction in functions and staffing levels could produce some significant savings.

Second, our model assumes that, given a broad-based waiver from the state, school-based assessment, planning, instructional reorganization and more effective responses to student need will decrease referral rates throughout the system. As those rates decrease, the costs of formal evaluation, which we estimate at more than $2,000 per student per year, will also decrease. As referral and formal evaluation functions decrease, placement functions and the need for annual reviews and triennial evaluations will also decrease, reducing costs even further. A much-reduced special education enrollment will also result in proportionately lower costs for CSE administrative and supervisory functions. Further, the city's centralized CSE structure, which is notoriously unproductive and inefficient, would be transferred to community school district control, where efficiency savings would become available for instructional support.

We have not discussed how transportation costs might be reduced. But given our emphasis on educating students with disabilities in their home or zoned school, the expected reductions in referral, evaluation and placement, and the consequent reduction in students classified as disabled and placed in distant schools should significantly reduce transportation costs. These costs are currently borne by the city and state, and they are quite significant. Each student bussed to a non-neighborhood school, for example, costs approximately $2,000 per year. If a district had two thousand students classified as mildly and moderately disabled, and one quarter of those students were bussed to non-home schools, that transportation would cost at least $1 million per year. Therefore, if districts substantially increased their home-school placements, the savings that could be returned to districts and allocated to schools as additional enrichment resources could be quite substantial.

We recommend that a formula for sharing reductions in transportation costs be developed to allocate the benefits of this reduction to the schools, districts and high school superintendencies, as incentives to increase home school placements even further.

Finally, our recommendations for developing public pre-school settings may well result in significant savings in transportation costs, which would accrue to the city and the state.

We believe that all these reductions in functions critical to the maintenance of a procedure-driven, predominantly separate special education system will, across the five-year implementation effort, substantially reduce overall special education costs. *It is absolutely essential that we reinvest all these savings in general education to increase its capacity to meet student needs and reduce the need to place students in special education.*

Therefore, it is also essential to guarantee that comparable levels of resources remain available across the five year implementation period we recommend. As specific special education costs are reduced, levels of funding and resource provision must be maintained so that schools and districts are not punished for the educational gains that result from the school-based instructional reorganization they generate. The resources formerly spent on referral, evaluation, placement and separate education must be used to reconfigure, and enrich, an expanded and flexible general education instructional organization.

Notes on Transition

We have proposed a sea-change not only in how special education is currently organized, but also in the relationships that should link, but currently separate, special from general education. How might such a massive and complex system make the transition from our current structural, organizational and instructional arrangements to the very different configurations we propose?

Rather than offer a transition blueprint, we have set out a variety of transition strategies. We think the changes we propose should be phased in methodically, in community school districts and high school superintendencies varying substantially in their historic patterns of willingness to participate in new initiatives. Moreover, we recommend that a comprehensive evaluation effort be mounted to document and analyze the pitfalls, problems and unintended consequences that inevitably accompany all implementation efforts, so that whatever aspects of our design prove inadequate can be modified.

We urge a careful phase-in that presents the transition as a series of Requests for Proposals (RFPs) for which districts and high school superintendencies bid. Proposals should initially be limited to some proportion, perhaps 20 to 25%, of the school system's total student population. This process would insure that those districts most eager to implement the changes form the pool from which selection is made. It would also provide the ability to monitor the change effort, discover unintended consequences before they affect an entire system, and make the necessary adjustments and corrections in a smaller, more contained setting. This method also allows other districts to be added in subsequent years, through incremental procedures that could involve the entire school system across a five-year period. Districts joining the reform in subsequent years could also be the recipients of carefully tailored professional development to increase their capacity for eventual implementation.

We should explain why we recommend that districts, rather than individual schools, be the agents of this phase-in implementation. Because instruction of students with mild and moderate disabilities was not decentralized to community school districts until 1986, the distribution of those students *within*, as well as across, districts remains idiosyncratic, reflecting the historic pattern of a separate, centralized special education program. Therefore, where special education students are placed within a district often bears little relationship to their home schools. This citywide pattern of non-home school placement and maldistribution of special education programs can *only* be addressed by districts. As they begin to return students with disabilities to their home schools, and thereby make the pattern of special education program distribution more equitable, districts must also determine how to adjust school funding allocations to reflect this increasing equity.

One of the objections to such a proposal-based phase-in process is that we will not learn enough about what can go wrong if the change is carried out *only* by districts eager to implement it. To adequately test the scale of changes we propose, we may well need a mix of districts and borough superintendencies whose practices in both special and general education, and whose willingness to engage in new initiatives, vary substantially. If we want transition processes that bring a mix of district and high school superintendency practice into the initial phase-in round, an entire borough could be selected for initial implementation. Choosing a borough would provide a natural mix of district and high school sites, and would also provide a sufficient range of both special and general education practice so that most potential problems, unintended consequences and structural and behavioral rigidities would emerge.

Because the ultimate decision about how the transition from current practice to what we propose is the Chancellor's and the Board of Education's to make, we offer no specific recommendation. The scale and complexity of the changes necessary to achieve the new arrangements we propose requires careful consideration to select the most appropriate transition strategy.

Whatever transition strategy is ultimately chosen, we think the transition period can be used to resolve two major problems within the model we've proposed: the problems posed by the current inequitable distribution, within schools and districts, of students classified as disabled; and the problems posed by student enrollment in programs of choice *other than their zoned school.*

Currently students classified as mildly and moderately disabled are not equitably distributed across schools and districts. Because responsibility for their instruction was a central, and *not* a district, function until 1986, because some facilities were overcrowded and otherwise limited, but also because of historic patterns of avoiding the responsibility to educate students with disabilities and instead, exporting those students to other settings, many schools and districts have disproportionately few programs or instructional settings appropriate for students with disabilities. (Therefore other schools and districts have disproportionately *more* placements and services for disabled students.) But whether schools have disproportionately few disabled students by design or because of situations such as overcrowding over which they have little control, such schools would be eligible for little or no enrichment allocation. Thus the redesign of those schools that we call for, based on student assessment and an instructional plan, would have no additional resources to take advantage of.

At the elementary and middle school level, we see the district as the administrative entity responsible for insuring equitable distribution of students and corresponding allocation of resources. At the high school level, we see the borough superintendencies as the entity responsible for equitable distribution and allocation of resources. Therefore we propose that another transition task is to require those districts and high schools selected to initiate the phase-in to propose ways to address whatever patterns of inequitable distribution of students classified as disabled currently exist within their jurisdictions, and to devise allocation formulas that are equitable for all their schools.

Whatever solutions districts and borough superintendencies propose, current patterns of inequitable distribution will not quickly be resolved. But as the work of the Division of High Schools across the last decade indicates, commitment to more equity in the distribution of programs for students with disabilities does bring results. The fiscal incentives built into our model should encourage districts and high schools to move expeditiously towards greater equity of placement for disabled students.

The second problem involves the role of choice in elementary and middle schools. We have described our model as playing out within a system in which student assignment is predominantly based on residence (except at the high school level). But although all elementary school assignment, and much middle school assignment, is based on residence within a school's specific geographic zone, increasing numbers of students are selecting and enrolling in schools of choice *outside* their zoned, neighborhood school. If the fiscal disincentives built into our model depend on identifying students as belonging to their original *zoned* school, and penalizing that school by loss of funds once its students are referred out, how can patterns of choice be accommodated?

The solution we propose is to consider, for purposes of calculating both the fiscal disincentive and the aggregated scores, all the students *originally enrolled* in the school as the students who belong to the school. Therefore students enrolling in a school outside their zone through programs of choice would be considered as original enrollees in that choice school. If a student in a choice program was subsequently referred for formal district evaluation, classified as disabled and placed in another school, the choice school (the student's original enrollment) would face the loss of funds through the fiscal disincentive.

In the section describing the operation of our model at the high school level, we sketched a similar principle to operate the fiscal disincentive in settings where most students exercise choice. Since all schools maintain updated enrollment data, there *should* be few problems involved in using the same principle for elementary and middle schools. Therefore we suggest that, when enrollment in schools is based on residence and zoning, that the fiscal disincentives built into our model be applied against the home or zoned school when students move, as a result of referral and classification, from that school to another instructional setting. When students in schools of choice move, as a result of referral and classification, from their original school of choice to another instructional setting, the fiscal disincentive should be applied against the original school of choice in which they enrolled.

This recommendation may not sufficiently address the possibility that schools of choice may select *against* students they perceive as having learning needs that may eventually result in referral out of the school, and loss of the resulting funds from the school's enrichment allocation. We think that our funding mechanisms and our accountability structures need further exploration and development to insure that they improve learning outcomes for all our students.

We have developed these proposals to advance a necessary discussion about how to significantly improve both special and general education. We see our recommendations as an invitation, to all the city's school constituencies, to begin a change effort that will result in clear directions for system-wide improvement, and a renewed focus on learning, for *all* our children.

APPENDIX A:

Public Reaction to *Focus on Learning*

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Public Reaction to *Focus on Learning*

Focus on Learning was issued as a Draft Report on May 19, 1995. The New York University team developed the report as a framework for reorganizing both general and special education in New York City public schools, but recognized that many of its recommendations were controversial and needed further exploration. Therefore, the Draft Report ended with an invitation "to all the city's constituencies to begin a dialogue that will result in clear directions for system-wide improvement."

Formats for public response were organized by the Board of Education, which held two sets of hearings on the report in each of the boroughs in June, 1995; more than 300 individuals gave oral or written testimony. In addition to these public hearings, the Chancellor, the Board of Education, and members of the NYU team received more than 50 written responses from individuals and advocacy groups during the 1995 summer months.

The chart on the following page shows the testimony given by various constituencies. When witnesses identified themselves as both a parent and a teacher, or as a parent of both special and general education students, they were classified twice. In fact, most of the 28 parents who identified themselves as having children in general education programs also had children in special education.

In addition to these oral and written testimonies, more than 90 parents and teachers from the Queens School for Career Development PTA sent signed form letters to the Queens Regional Office of the Committee on Special Education, asking that the present system be left intact. Finally, the Fund for New York City Public Education organized the following constituency-based focus groups from June - October, 1995: principals of community school district schools, District 75 principals, community school district superintendents, New Vision Schools staff, parents of students in district special education programs, parents of students in District 75, United Federation of Teachers representatives, and members of the Council of Supervisors and Administrators. The Fund's summary of its findings from these focus groups will be issued after the groups are concluded.

Despite the multiple hearings and other forums available for reactions and discussion, some parents and educators of special education students expressed alarm that *Focus on Learning* was not a draft but "a final report." Some witnesses also believed that the City's fiscal needs were driving what they saw as a rushed

	District 75	CSD/HS Sp.Ed	Non-Sp.Ed	Clinical	Other
Parents	80	25	28		
Teachers	40	12	3		
Principals/Asst. Principals	17	4	0		
Students	7	2	1		
Other school employees	16	8	5		
Union representatives					8
Psychologists, education evaluators, social workers	2			42	
Special ed supervisors	1	11			
Clinical supervisors	1			6	
Related service providers				9	
Superintendents	1				
School board members					1
Higher education					1
Elected representatives					3
Advocacy & constituency organizations					34
Business working with special education students					2

calendar of proceedings, and that special education was about to be dismantled during the summer. The testimony also suggests that a number of parents and educators confused impending 1995/96 cuts in the special education budget with the draft report of *Focus on Learning*. Whatever the source, anxiety concerning an impending loss of services appeared to be particularly strong among District 75 parents and school staff, who feared that prevailing opinion outside the District was that "money spent on special ed is wasted."

In what follows, we synthesize public responses to the recommendations offered in *Focus on Learning*. While a small number of witnesses had clearly read the entire Draft Report, and were responding either positively or negatively to many specific details, most appeared to have read only the Executive Preview. Many witnesses seemed to have come to the hearings because they had been notified by advocacy or constituency groups that the report, or imminent budget cuts, threatened the survival of programs serving their children with severe disabilities.

Our summary of the suggestions, critiques, and emendations made by witnesses is divided according to the Draft Report's key areas of recommendations:

1) Creating a school-based instructional system.
2) Establishing a system of classroom-based informal assessments of students in the schools and formal assessments only at the district level.
3) Developing new lines of responsibility for evaluation, placement and school-based support for all children at-risk of school failure and children with disabilities.
4) Developing a more integrated system of funding that encourages less restrictive student placement and provides incentives for serving all students in neighborhood schools.
5) Accountability.
6) Restructuring District 75 to enhance its role as a resource to the districts and high schools.
7) Enhancing the rights and choices available to parents of all children at risk of school failure and children with disabilities.
8) Changing the present system for educating pre-school children with disabilities.
9) Implementation Plan.

1. CREATING A SCHOOL-BASED INSTRUCTIONAL SYSTEM.

> ***The core recommendation of the NYU Draft Report was to change the current system to an integrated, school-based model. Personnel, instruction, assessment, and fiscal allocations would form a unified system, with broad safeguards to protect the intent of special education funding.***

The concept of a unified, school-based model was supported by several major groups, including Advocates for Children of New York, the Citizen's Committee for Children of New York, the Council of Supervisors and Administrators of New York, New York State Association of Bilingual Education (SABE), and the United Federation of Teachers. As the SABE representative testified, "an integrated school model can better serve the needs of all students, including the specific educational needs of students from diverse linguistic and cultural backgrounds." A special education teacher called the school-based model a "vision of the future and one that will give the community a true sense of accomplishment." Similarly, a specialist in treating children with attention deficit disorders pointed out that these children "do not need special education services. What they need is a smaller classroom where the teacher can give them more individualized attention." Moreover, "removing these children from special education," she said, "would save thousands of dollars per child."

Two District 75 professionals, in a joint statement, reported that, although they had been prepared to fight for their jobs, they had been surprised to discover in *Focus on Learning* "a comprehensive plan" for all children to be educated in their community school. "If implemented in the spirit it was developed, this plan offers us the opportunity to change the direction and substance of education in this city and we can't wait to be part of that process." The key question for them was whether *all* educators would be able to change their attitudes and behaviors towards special needs children.

While the Council of Supervisors and Administrators supported a school-based model, they argued that a prerequisite was a *district-wide* plan that would make decisions about sending students out of the district, distributing special education students within the district, and allocating personnel, technology and fiscal resources.

However, even among those who believe that the current system turns special and regular education into adversaries, there were many reservations about the Draft Report's effort to develop a unified system, or what some witnesses referred to as inclusion. A social studies teacher in a general education school, for example, described the difficulty he had teaching a class which contained Regents, non-Regents, and special education students. "The honor student is bored. . . . The special education students can't keep up."

A number of witnesses, including parents and educators, also were fearful that a unified system would not serve disabled children well, particularly in a period when regular schools suffer from severe funding cuts. A resource room teacher explained how she worked with five students at a time, but, because of budget cuts, was being threatened with ten students every 42 minutes. A psychologist predicted that with budget cuts, class size would increase, and since "research shows crowding leads to aggression...we will pay a high price in maladjustment and crime." Another psychologist noted that in his school many of the regular students weren't doing well. "What good would it serve to infuse special ed students into already overwhelmed regular ed classrooms?" A witness summed up this line of concern: given the chronic underfunding of education for New York City's school children, "it isn't difficult to figure out that principals and community school districts will try to use the special education monies turned over to them to make up funding shortfalls for general education."

There were also a number of comments concerning the risk of making significant changes, without any experience of the benefits of a school-based model. A mother of three public school students, one in a District 75 school, asked: "What is the school-based model? Who has seen it? Who runs it? Has it generated data? Has it been successful in any schools?" Another mother suggested that the first step in any special education reorganization should be to fix the MIS programs, "which have failed miserably in both educational and social outcomes, despite the fact that they are already under district control."

Parents, educators, and special education students also criticized the plan for what they saw as its naive assumption that "basic attitudinal changes will take place" toward children with disabilities on the part of practitioners throughout the public school system. In the words of a teacher at the Bronx Center for Multiply Handicapped Children, "this method of reforming special education is like planning a wedding to which the bride (general education) was not invited." A special education teacher in an elementary school also talked about how she constantly fought with her principal to keep as many children as possible in regular classes. "The principal has said publicly that my philosophy is inconsistent with that of the school." A student who had been transferred from the Hungerford School, which serves children with severe physical disabilities, to a general education school, made the point about the two divided worlds more sharply: "When I got there they always talked about me in front of me as if I were dead. But I am not."

2. ESTABLISHING A SYSTEM OF CLASSROOM-BASED INFORMAL ASSESSMENTS OF STUDENTS IN THE SCHOOLS AND FORMAL ASSESSMENTS ONLY AT THE DISTRICT LEVEL.

> ***The school-based model involved several recommendations regarding assessments. First, the Draft Report recommended informal assessments of all students at risk of academic failure. To best organize learning settings to meet student's educational and developmental needs, these assessments should be conducted in the schools and must be instructionally-based.***

This recommendation generated a number of complaints about the existing assessment system. A District 29 social worker argued that the current system contains endless redundant evaluations to change an IEP, and doesn't provide for the school child who is marginally impaired. Some schools have effective pupil personnel committees which have deferred or eliminated formal assessments. In her view, "Informal assessment, at the school level, as provided for in the NYU plan, along with counseling and support services, can solve many problems."

Several special education parents liked the emphasis on educational outcomes, as opposed to the procedural outcomes and compliance mechanisms of the current assessment system. The United Federation of Teachers, which testified in all boroughs, also agreed that best assessments take place in the school. However, like a number of other witnesses, the UFT was concerned about the lack of definition of informal assessment in the NYU Draft Report, and argued that more guidelines need to be developed as part of implementation. Similarly, several witnesses argued that informal assessment is a difficult concept, poorly understood, and demands adequate time, sufficient work space, training, and the provision of other resources for effective implementation. Some also pointed out that an informal assessment can be "a very subjective process," which may encourage decisions that concur with the wishes of the principal or other school personnel.

Finally, there was fear that the number of children requiring informal assessments would be overwhelming. As a psychologist wrote, "If the IST at my school were to informally assess all students at risk of academic failure, we'd be taking on hundreds every year."

Several psychologists, education evaluators and social workers also pointed out that the Draft Report places undue emphasis on the academically at-risk student, while not clearly focusing on the many youngsters who are academically adequate but behaviorally disruptive or withdrawn – the "socially-emotionally inappropriate" students. Some witnesses accused the report of ignoring the "total child," and a bilingual social worker pointed out, "Behind the 'bad' student lurks the 'mad' student, who is probably hiding a 'sad' student."

Some educators and parents also feared that school-based assessments would lead to evaluations that "fit the program the school has to offer." Some also argued that the problem is not the nature of assessments currently in use, but all the teachers and principals who don't know what to do with the kids.

> ***Second, the NYU Draft Report recommended that Instructional Support Teams (IST) be established in every school. Composed of supervisors, guidance counselors, classroom and support teachers, some former SBST staff and related service personnel, the IST would con-***

duct informal assessments, analyzing instructional settings of at-risk students, and recommending changes or enrichment resources to meet these students' needs.

This idea was responded to largely by school professional staff, who generally liked the idea of Instructional Support Teams, as well as the Draft Report's stress on early identification and intervention. However, there were several criticisms. First, some witnesses disagreed with the assumption that school-level instructional planning would improve a school's responsiveness to individual students' needs. While some feared too much power residing in a single body, others feared that, to be effective, ISTs would need more knowledge and skills than school staffs currently possess. A teacher argued that, if the teachers and other school staff are well-trained, they should be effectively responding to student need, and therefore ISTs should not be necessary. And several parents worried that parents were not mentioned as members of ISTs.

Some educators also feared the development of pressure on the ISTs to make decisions that "conform with the principal's agenda," particularly given the Draft Report's proposal for financial disincentives to send students out of their home schools. Several witnesses argued that administrator pressure on ISTs to prevent a referral for formal assessment might well limit students' rights to due process. As one witness insisted, "Keep in mind that *Jose P.* came about because schools had no incentives for providing services to children with special needs."

Conversely, a special education teacher believed that if many principals were like hers, referrals to special education would only increase. Another witness asked: "Why can't IST's be given independence [of the principal]?" And a third: "Are principals and district superintendents ready to accept this responsibility for not only educational and academic decisions but also clinical decisions?"

While supporting some components of the school-based plan, several clinical professional groups questioned allowing schools to do only informal assessments, and stressed the need to include their own services as part of the ISTs. One psychologist argued that ISTs should include psychologists, who know and are invested in the children's progress; moreover, these individuals should be allowed to come to the "professional judgement" that a child seen informally would benefit from a formal assessment, and that such formal assessments shouldn't have to be referred to the district level.

Another psychologist angrily pointed out that in the NYU plan psychologists would be forbidden to use the full range of their diagnostic skills:

"If you had a medical problem, would you want the doctor to informally assess the problem and have you go through a period of trial and error because he was not allowed to order available diagnostic testing?"

Still another psychologist argued that the Draft Report's use of informal assessments was "a ruse, because once something is done in a planned manner it is formal."

A SABE representative noted that school-based teams such as ISTs should always include professionals with bilingual skills. And a UFT chapter leader representing SBST members reminded the NYU team that informal assessments were once carried out at the school level, and that they were terminated because of accusations of unethical and illegal practices and of children being denied services.

A parallel defense of professional expertise was made by supervisory personnel. At two hearings these individuals stressed that Supervisors of Education Evaluators provide needed supervision of the diagnostic assessment process. A Social Work Supervisor also argued that such supervisors are critical, in training and evaluating clinical staff, as well as in mediating with school staff, and resolving parental concerns before they escalate into hearings.

> *Third, the Draft Report recommended that resources and support be provided to develop school-based processes of intensive professional development that increase school capacity to reorganize teaching and learning so that the educational and developmental needs of all children are effectively met.*

Despite the recommendation to provide resources and support for staff development, there was widespread concern about the extensive upgrading of knowledge and attitudes among school staff needed to bring about the reforms proposed by the NYU team. A teacher in District 75 wondered how local school staffs could transcend the inheritance of the specialized graduate programs that prepare teachers for work with retarded, autistic, or otherwise handicapped children. A principal of a SIE IV, V, and VI school asked whether teachers operating in a unified system shouldn't have to earn dual certification, in their general education areas as well as in special education. A psychologist remarked, "This sounds like intensive training. How will teachers carve out mutual times in their day for such training? And who will offer it?"

A parent was uneasy about how well the top-down lecturing format generally offered by the Board of Education's professional development units would serve this extensive retraining. Another worried,

"I don't know where you get the training for these teachers, these thousands and thousands of teachers out there who don't have the qualifications or the experience . . . to deal with your children. I don't know how my daughter's educational and transition plan would be implemented with people who don't have the experience, who don't know her, who are . . . walking in cold."

To stress the enormity of the training effort required, a number of parents, educators and students also emphasized the severity of many children's disabilities. Several readers of *Focus on Learning* believed the Draft Report didn't take seriously the severity of students' disabling conditions. A counselor in a school where students often arrive in wheelchairs and on stretchers, said, "I was particularly sensitive to the shock I often saw on the face of job applicants, and the need for me to help them see beyond the handicap to the child beneath the bandages." And a Hungerford School student with cerebral palsy, who communicates through a pointer on his head that activates a computer lapboard, feared the impression he would make: "We are defenseless because our bodies are not able to defend us, but our brains work. So many times able-bodied people think when our bodies do not work our brain does not work."

Fourth, the Report recommended that SBSTs be dissolved, and that the former SBST members become either school support staff or members of district level CSEs.

Because of the Draft Report's lack of clarity, as well as its substance, this recommendation drew objections from a number of administrators and current SBST members, as well as quite specific opposition from the United Federation of Teachers. The most frequent criticism concerned the perception that *Focus on Learning* meant to place the SBSTs under the principal, rather than to make former SBST members responsible to the principal as part of school support staffs. Thus many witnesses mistakenly perceived that SBSTs would be under pressure to meet the needs of the school rather than the individual student.

A number of clinicians and other professional staff noted that, "once a specialist is accountable to the principal he or she cannot always act in accord with his or her best professional knowledge." A psychologist said: "Having the school principal as the supervisor also significantly reduces the SBST's ability to effectively advocate for the children." A social worker predicted that, even with financial incentives, placing SBST teams under the control of principals would actually increase referrals. Principals who don't know what to do with difficult students will get their social workers and psychologists to create "referral packages that cannot be challenged." Why not encourage "vigorous collaboration between SBSTs and building principals, instead of *changing governance*?" asked a District 9 school psychologist.

Second, several educators criticized changing the mission of the SBSTs. A Supervisor of Educational Evaluators argued that merely by changing some of the rules and requirements for formal evaluations of all referrals, the SBSTs could be freed for preventative activities. One witness also agreed that the current process may result in lost time, but he considered it the most effective process in terms of quality and safety. The Council of Supervisors and Administrators worried that, without additional funding, the attention of SBST members would be diverted from critically needed classroom support. All these objections might have been resolved had the draft made clear that SBSTs were to be dissolved rather than placed under the principal's jurisdiction, and that formal assessment, which now takes place at the school site and is conducted by SBSTs, would take place *only* at the district level.

3. DEVELOPING NEW LINES OF RESPONSIBILITY FOR EVALUATION, PLACEMENT AND SCHOOL-BASED SUPPORT FOR ALL AT-RISK CHILDREN AND CHILDREN WITH DISABILITIES.

> ***The Report recommended that responsibility for all formal evaluation and placement of children referred for potential disabilities be transferred to the community school districts and the High School Division. Existing CSEs should become responsible to community school district superintendents; new high school CSEs should be developed within borough superintendencies***

A number of psychologists, social workers, and evaluators raised arguments against what they described as a two-tier evaluation scheme. While several argued that it generally doesn't make good use of professionals, others noted that it contradicted the idea of a genuinely school-based system.

A few educators and parents voiced the fear that limiting referrals to district-level CSEs would result in delays in placement, since home schools would probably try to keep the child as long as possible to avoid losing funding. Moreover, the CSEs would be under pressure to refer children to their local schools in order to keep funding within the district. The Queens Chapter of the Autism Society of America, Inc. echoed this concern, given the mix of fiscal disincentives against placing children outside their jurisdiction, combined with "*only* district-level CSE teams" having the authority for formal evaluation and classification, and "*only* the district [having] the power to assign students to placements other than their home school."

Several witnesses argued against shifting the burden of formal evaluation to districts, since district CSE's would be overwhelmed by the workload. One argued that the CSE should not be placed under the Superintendent or the DASE, but should remain independent, so that it can oversee and maintain the integrity of the assessment process. A Supervisor of Social Workers asked: given that Social Work and Psychology Supervisors were only recently hired — and with good minority representation — would this prove to be another instance of last hired, first fired?

4. DEVELOPING A MORE RATIONAL AND UNIFIED SYSTEM OF FUNDING

> Focus on Learning *advocated changing special and general education funding formulas in several broad areas. First, the Draft Report proposed that state funding formulas currently providing incentives to place students in special education and in inappropriately restrictive settings should be revised. Related to this, the Draft Report recommended that the public school system be protected against decreases in special education funding via a state waiver with a hold harmless provision that would maintain, for five years, the level of special education funding currently derived from state aid formulas and yearly incremental increases.*

While supporting the general thrust of the Draft Report, many witnesses representing nearly all constituencies responded to its financial proposals as, at best, utopian. "It's idealistic, yet unrealistic," said one. "Balancing the budget on the back of the special education system," said another. Several witnesses argued that, with impending budget cuts, the report's recommendations would result in funding being taken away from special education students. A number of educators and parents also believed the plan was prompted by fiscal necessity, and feared that any co-mingling of funds would only short-change special education students. As one witness argued, "Inclusion is downright expensive. If it is done on the cheap, students in general education will suffer, as will students with special needs."

Several witnesses were also suspicious of the Draft Report's claim to be proposing improvements for *all* students.

> There is absolutely no mention of how the outcomes for general education students are to be improved . . . by the integration of the special education children—except in one specific way. The funding that was formerly dedicated to special education services will be folded into general education.

Several witnesses also likened the proposed merging of funds to the block grants being proposed at the federal level.

While one educator thought a five-year hold-harmless clause allowed the City enough time to try out the plan, several asked where the enrichment would come from after the five-year trial period. New York Lawyers for the Public Interest, which represents students with developmental and other disabilities, argued that, because of expected budget cuts, especially in education, "more is needed than the state 'hold harmless provision' to insure implementation does not become decapitation."

A teacher noted that the Draft Report may have been prompted by the disproportionate number of African-American and Latino students in special education programs. However, she asked: "Is it necessary to destroy special education and deprive those children for whom the system was intended of the chance to flourish in order to right these wrongs?" Finally, a parent asked that there be data collected on how learning disabled and other less severely impaired students do in their own districts "before undertaking an expensive administrative restructuring."

> *The Draft Report recommended that districts and high school superintendencies be required to merge their special and supplementary general education resources to provide a single enrichment allocation to each school, to be used, within the context of broad guidelines, to serve the needs of all at-risk students, both those who are disabled and those at risk of academic failure.*
>
> *Unfortunately the recommendation itself did not make sufficiently clear that the merging of resources was meant to apply only to community school districts and high school superintendencies, which serve only students with mild and moderate disabilities. That is, as the text itself elaborated, this merging of funds did not apply to the District 75 programs that serve students with severe disabilities.*

The overwhelming response to this recommendation was fear that special education students with severe disabilities would be harmed. "Money commingled is money denied." Because of the failure of the recommendation to make clear that the merging of resources would not apply to District 75, witnesses were particularly fearful about what would happen to the students with severe disabilities served by District 75. Thus a District 75 principal argued that the enrichment described in the Draft Report was a code for using the money to benefit the greatest number of students. A District 75 mother exclaimed: "In the scramble for dollars, these children will be held back and denied the appropriate education they are entitled to under PL 94-142."

The Queens Chapter of the Autism Society of America, Inc. expressed "great alarm" at the possibility of merging special and general education resources. Their point, echoed by other witnesses, was that, given a hierarchy of least expensive to most expensive interventions, such as the self-contained classrooms needed by severely handicapped children, fiscal incentives would encourage most schools and districts to avoid the expensive interventions.

> *The NYU Draft Report also recommended creating significant fiscal incentives to educate children in their home schools, to discourage the over-referral of children to special education, and to provide a broader range of placement options for children with disabilities, especially for those with low-incidence or severe disabilities.*

Again, the common but mistaken assumption among witnesses was that, in merging general and special education funds, the school-based model would merge funds intended for the students with severe disabilities served by District 75 schools. Some argued that dispersing special education would reduce the cost-effectiveness involved in regionalizing expensive services. Among those who understood that District 75 would remain, several argued that there simply isn't enough money to fund both District 75 and to disperse money to the districts.

Several educators, as well as the UFT, argued against fiscal disincentives for schools, as opposed to school-based incentives in the form of additional clinical and support services.

There was also some fear of increasing funding to the districts without exercising greater control on how it was spent. This issue of expanding funding without greater regulation was raised from several perspectives. Some parents and educators worried that schools and districts will become "powerful new fiefdoms whose power will be largely unchecked." Others argued that the plan needed to ensure that money was really spent for at-risk children and children with disabilities. Specific constituencies also wanted to keep tabs on money intended for their particular group: for example, SABE argued that funding needed to be regulated to safeguard the needs of limited-English proficient and bilingual learners.

5. ACCOUNTABILITY

> *The Draft Report recommended the establishment of an Accountability and Quality Assurance Office with several functions: 1) assessing the effectiveness of instruction; 2) identifying schools and districts whose practices fail to meet the needs of students at risk of school failure and students with disabilities, and referring these schools and districts to the Chancellor for corrective action; 3) reporting regularly to the* Jose P. *plaintiffs and the public; and 4) recruiting and providing training, supervision and support for Parent Information and Advocacy Teams in the districts.*

A psychologist thought that an Accountability and Quality Assurance Office was a good idea, but asked, rather than inspecting IEPs and other bureaucratic paperwork, "Why not establish such an Office right now, to really look at special education in depth?"

But a number of witnesses who supported the general direction of *Focus on Learning* were concerned about the Accountability and Quality Assurance Office. The most common criticism was that it would be a new source of bureaucratic fat. One witness called it a potential "bureaucratic money pit of vast proportions." Another noted that the outlined responsibilities of the Accountability and Quality Assurance Office are " so staggering" that they would inevitably generate another massive bureaucracy.

Several specific criticisms were made. One witness argued that, while the Office "provides a broad based mechanism for monitoring and advising the Chancellor, there are no standards or mandate for enforcement. A full-fledged plan should indicate when and how the Chancellor takes action on the Accountability Office reports." A District 75 educator worried that, because the new Accountability and Quality Assurance Office will not catch "all the subtle (and not-so-subtle) daily monetary diversions and other costcutting," it will not be a viable safeguard. A Supervisor of Educational Evaluators argued: the AQAO "will not be effective until a PRODUCTIVITY STANDARD is established."

The Queens Chapter of the Autism Society of America pointed out that a current counterpart of the Accountability and Quality Assurance Office is the state's Commission on Quality Care, which, they claimed, hasn't worked very well: corrective action by the Commission results mainly from educated and concerned parents who bring specific situations to its attention. Thus they predicted that children of poor, uneducated or non-caring parents will be shortchanged by the proposal.

A District 75 parent raised several thoughtful critiques of the Accountability and Quality Assurance Office: 1) that it would be concerned with systems, not individuals;

2) that its reports to the Chancellor and the public would not be timely enough; 3) that its recommendations to the Chancellor would not have any teeth, since the Office itself has no power; and 4) since the Office is to be responsible for all students, not just those with disabilities, it would be a questionable advocate for the latter. This witness also argued that any reorganization plan for special education should include the creation of an independent entity "with the authority equal to that of a district or high school superintendent," to ensure that the needs of students with disabilities are met.

The Parent Information and Advocacy teams received some comment, both from individual parents and from advocacy groups. Advocates for Children contended that, for Parent Information and Advocacy Teams to fulfill their role, "They should be trained and provided technical assistance by independent, non-profit organizations." A parent also argued that students with disabilities need advocates, not mediators. And another parent asked:

"If Parent Information and Advocacy Teams are established in each district and high school superintendency, who will be the members? . . . hand picked parents . . . hand picked staff . . . people who prefer integrated programs . . . people who prefer self-contained programs? To whom will these Teams report and what will they report? And, if there are problems found, who has the power to impose change: the superintendent . . . a school board . . . Central Board?"

6. RESTRUCTURING DISTRICT 75 TO ENHANCE ITS ROLE AS A RESOURCE TO THE DISTRICTS AND HIGH SCHOOLS.

> *The Draft Report recommended supporting District 75 to help community school districts develop effective programs for students with severe disabilities, thereby creating choices for parents of student placement in District 75 or local schools.*

Of all the Draft Report's recommendations, this one generated the most angry and frightened responses, because many witnesses were committed to preserving District 75 and assumed that the real agenda of *Focus on Learning* was not choice, as the recommendation stated, but rather elimination of District 75 schools and programs. A great deal of anguished testimony advocated maintaining the security and protection that children with disabilities were perceived as receiving in District 75 schools and programs. Acknowledging the legal mandate to place all children with disabilities in the "least restrictive environment," these witnesses argued that District 75 programs provided such environments, and that students with severe disabilities should not have to attend regular schools.

Several District 75 witnesses also took issue with what they perceived as the Draft Report's assumption that students with disabilities were "stuck" or "isolated" in schools composed solely of students with disabilities, and that these students wanted to be in schools with "normal" children. In the words of an angry parent, "My son . . . likes to be around other children who are mentally retarded, and other children who are autistic, and other children who have cerebral palsy." A Career Development Center teacher made the point in another way: "Students with disabilities can be the most amicable people in the world. They may be ready for 'interaction with their high school peers,' but the regular education system is not even close to being ready for them."

A number of witnesses, including teachers, parents, students, and alumni from Junior High School 47 for the Deaf, spoke or signed against dispersing deaf students to local schools. These witnesses described the isolation, loneliness, and shame — all generated by an inability to communicate — which deaf people experience in a hearing world. By contrast, they extolled the sanctuary offered at the School for the Deaf: its ability to work with students with many cultural backgrounds and a wide variety of gifts and secondary disabilities, its provision of a common culture and language — American Sign Language — and its strength in giving its students lifelong friendships and a sense of community. As a teacher, herself deaf, pointed out, at JHS 47 deafness is "depathologized," and signing is seen as the face-to-face language of a linguistic minority. Another teacher summed up the overwhelming view by signing: "it's impossible to put deaf children in a hearing school. There is just no point to it."

Parents, educators and students from other District 75 schools described their settings as filled with staff who work tirelessly, far beyond the regular school day. Many argued that children do get "a good education," or at least the education they need, in District 75 schools. A common plea among professional staff in District 75 was that the NYU team visit schools and see how well they were functioning. Many special education parents expressed satisfaction with the instructional services at both District 75 schools and in the community school districts. As one witness put it, "The low scores in District 75 are not the fault of the schools, but a reflection of the severely troubled students that these schools serve."

Perceiving the Draft Report, along with impending budget cuts, as threatening all District 75 schools, several witnesses suggested comparisons with the closing of psychiatric hospitals, which turned mentally ill people into New York's homeless, because the promised community supports were rarely provided. Advocacy groups, social workers, teachers and psychologists also testified that, just as the regular schools have suffered increasingly from the social problems affecting our society, the problems of the special education population have grown more serious in recent years. Therefore they argued that this was the worst of all times to bring emotionally and physically fragile students into the general education schools.

Witnesses used words like isolation, misunderstanding, ridicule, humiliation, and prejudice to describe the world that awaited special education students in large and overcrowded general education schools, where many far stronger students are disengaged and alienated. As the Parents' Coalition to Save District 75 put it, "Our innocent children, thrust into the noxious world of the regular education high school, will lose pieces of their dignity, self-respect and safety, as well as part of their funding and services."

The critical issue for parents and teachers alike was that services in schools geared to general education would not prove adequate for students with severe disabilities. Witnesses feared the loss of simple but critical facilities like barrier-free environments, also feared dangerously high teacher-student ratios, and worried about their vulnerability to violence and physical abuse. Concerns were particularly acute among parents whose children suffered from low-incidence disabilities, because they feared districts would choose not to provide for them because of the greater expense involved.

A few criticisms by professional staff and advocacy groups targeted the quality of education provided in District 75 schools and programs. Some educators saw District 75 as a place of rundown schools and discouraged teachers. A District 75 high school counselor reported:

"Many of my high school students complain that their school is not a 'real high school' and that they will never have the chance of obtaining a 'real' high school diploma. They say that with a special ed diploma they will never find a decent and good job and will always be treated differently. . . . I myself have observed the decaying state in which District 75 high schools work; it is pitiful indeed. The programs offered to these kids are limited, the staff don't give a damn many times, so the children lose interest in school. . . . I support you 100% on your plan of integrating District 75 programs."

Another educator worried that, by contrast with regular schools, in District 75 and the Division of Special Education, many of the individuals selected for top administrative posts had never served as principals of special education schools.

The Queens Chapter of the Autism Society of America (ASA) testified that the Draft Report's criticisms of District 75 were well-founded: that "there is no curriculum ostensibly because each child has his/her own goals," and that District 75 parents are desperate for some of the state-of-the-art special education programming that has mushroomed all over the country in the last few years. Nevertheless, the ASA argued that instructional accountability "can be better addressed under the current system than if our children are in isolated classrooms in the local district where a poor implementation of policy, driven by fiscal considerations, can result in a much worse situation." A District 75 parent from Staten Island was the only witness to note that *Focus on Learning's* plan was for districts to first "establish mechanisms to evaluate, place and educate students with mild and moderate disabilities" before even attempting to create programming for District 75 students.

However, several educators and parents worried about the lack of clarity in the Draft Report concerning the exact role of District 75, including what kinds of children it would continue to serve directly. Several noted that the suggestion that District 75 eventually play a support role seems incompatible with the claim to support a dual system offering parental choice.

> *As part of the restructuring of District 75, the NYU Draft Report also advised that the Division of High Schools be given responsibility for all District 75 Programs for high school students.*

Several educators argued strongly against using an age-based categorization to meet the needs of students with disabilities. One called the Draft Report's assignment based on chronological age, instead of individual needs, "a step backwards." This point was echoed in regard to autistic children, for whom adolescence is often the most difficult time. A number of teachers and clinicians also identified problems they feared special education students would face in making the transition from the districts to the High School Division, and questioned whether they would receive appropriate services after they reached the limit of the age-group dealt with by the High School Division. As several pointed out, disabled students receive educational services until age 21, and high school is just till 18.

Another educator believed there would be a problem in articulation between the community school districts and the Division of High Schools, and that there would be a bottleneck as students moved from the responsibility of the CSEs to the High School Division.

The Council of Supervisors and Administrators strongly opposed this aspect of the Draft Report. They argued that the high school programs, including the alternative schools, are almost universally failing special education students.

> The only enticing feature in a plan to move all District 75 students to the High School Division is that the high schools would get additional space, state of the art technology, and some spanking new buildings, which were designed for special education students and fought for by their parents.

Instead, the CSA recommended maintaining District 75 as it is currently organized, but moving towards a BOCES model that integrates general and special education students.

Several educators and parents also voiced concern regarding the transfer of specific District 75 programs to the High School Division. Two counselors from different schools argued against transferring responsibility for programs such as SIE IV, SIE V and SIE VII to the Division of High Schools. And a parent, believing that the Report aimed to send SIE VII students to general education high schools, argued: "the only thing you're going to encourage is not an educational outcome, [but] an entertainment outcome — like feeding the Christians to the lions."

A number of District 75 teachers and other professionals expressed their anger at what they saw as the Draft Report's denigration of the success of the special education schools for high school-age students. A special education teacher pointed out that although many regular high schools serve 2,000-6,000 students, the Occupational Training Centers (OTCs) and Career Development Centers (CDCs) serve only 200-300 students, and this small size enables them to be more responsive to individual students and helps create a less frightening atmosphere for students with severe disabilities. Several witnesses also argued that student attendance records in the OTCs and CDCs are much higher than in the regular high schools, as are placement in jobs. Several special educators at CDCs also reprimanded the Draft Report for calling these schools not accountable.

Moreover, in contrast to the description in the Draft Report of CDCs and OTCs as isolated places, examples were given of CDCs and OTCs sharing buildings with regular high schools, and of special education and general education students sharing activities. As for the academic outcomes being limited, a principal of an OTC declared: "I have some news for the people from NYU. Our students are retarded, and there is no cure for retardation right now."

In a less incensed tone, another witness spoke against the "growing trend toward assessing the value of public investment in special education by means of measurable academic gains." Finally, over 90 form letters from the Parent-Teacher Association of the

Queens School for Career Development begged the NYU Team: "Do not return these students to the high schools where they have met failure in the past!"

7. ENHANCING THE RIGHTS AND CHOICES AVAILABLE TO PARENTS OF ALL STUDENTS AT RISK OF SCHOOL FAILURE AND STUDENTS WITH DISABILITIES.

> ***The Draft Report recommended that an Accountability and Quality Assurance Office be established to take responsibility for recruiting, establishing, training, supervising, and supporting Parent Information and Advocacy Teams in all the community school districts and high school superintendencies, as well as in District 75. The Teams "would be responsible for disseminating information about parents' rights to formal assessment at the district level." In addition, the teams would serve as "an early warning system to the central Accountability and Quality Assurance Office about problematic school or district performance." Trained in mediation, conflict resolution and other negotiating skills, the Teams would also "provide an informal appeal mechanism for parents or school staffs" and they would have "the power to counsel parents involved in unresolvable disputes to seek impartial hearings."***
>
> *The Draft Report also assured that parents would maintain "their right to request a formal review, at any time, without consulting the IST, if they so choose."*

Since many parents apparently only received the Report's Executive Preview, they seemed unaware of the details concerning parents' rights developed in the Draft Report. Some also came to the hearings expecting to have their questions about the role of parents answered by representatives of the NYU team; and the lack of such an opportunity was seen by some as an indication that things would not be better under the NYU plan.

A parent reported that her son had been pushed out by one regular program after another, until he — and she — had ended up in a SIE VII program. Each subsequent encounter gave her little information, and no choice. Several other parents worried about district financial disincentives working against parent voice or choice:

> As it is now, parents have very little input as to what choices they have in placement. How would that change later when the CSE will be under even further pressure to refer the child first to the district schools in order to maintain the funds in the district?

Another parent wondered whether, "the only choice [for the parent] would be whether or not to proceed to a costly hearing." Expressing a similar concern, still another pointed out that parents may need a much clearer picture of their rights if the new system doesn't work.

Several parents, as well as the Parents' Coalition to Save District 75, argued that District 75 parents would lose the power of their voice in the community school districts, where they would be a small minority, and their wishes might conflict with those of most parents. Similarly, a mother of a student in a disrict program argued:

> Parents must be allowed to be a whole unit. Local PTA's will not welcome or embrace us into their organization. In my experience, local PTAs, workshops, presentations and meetings never include the special education entity within the school. We are as invisible to them as are our MIS children.

Finally, several parents argued that, if the NYU team really wanted to give parents more of a voice, they should have begun by consulting them about this Draft Report.

8. CHANGING THE PRESENT SYSTEM FOR EDUCATING PRE-SCHOOL CHILDREN WITH DISABILITIES.

> *The Draft Report recommended that the current arrangement for educating pre-school children be changed in three ways: 1) community school districts should be assigned responsibility to evaluate and place 3- to 5-year-old children with disabilities; 2) state funding should be expanded for Superstart programs such as Superstart Plus, to provide sufficient seats for all pre-school children with disabilities in the least restrictive environment; and 3) placement should be allowed in approved private pre-schools only when public options don't exist or are inappropriate.*

While these recommendations received relatively little comment, those who did respond were generally critical of the current system of providing services for preschoolers with disabilities. Advocates for Children, Inc. pointed out that it is currently involved in a lawsuit, *Ray M.*, because 95 percent of preschoolers with disabilities are served in segregated settings, and 75-80% are served by the same agency that performed their evaluation.

Several witnesses supported increasing state funding for Superstart Plus and other public pre-school programs for children with disabilities, but some argued that there is a necessary role for private preschools.

Several educators also commented on evaluation and placement of preschoolers. One pointed out that the current knowledge of evaluation and placement of 3-5 year-olds is poor. An education evaluator agreed that preschool evaluation and placement needs dramatic overhaul, and that preschool children would be better served if the Board of Education were the service provider and CSEs and SBSTs were involved in making independent assessment and placement decisions.

9. IMPLEMENTATION PLAN

Many witness expressed implementation concerns. Timing was a source of worry for many educators and parents. Some were afraid that *Focus on Learning* was going to be implemented immediately, or believed that "the plan is too fast." Those, like the UFT, who noted the Draft Report's recommendations for a slow, phase-in period, supported this. A parent commented: "Whatever changes are to be implemented I want them to be phased in very slowly with the parents completely involved in this process, and parents' needs and concerns taken into consideration."

The following specific suggestions for implementation were made repeatedly:

1) Implementation should start with the younger grades, so that the children can "grow together." While some witnesses believed that high schools should have to accept only those students who have been part of a newly integrated system, others saw integration as beginning with the youngest grade level of each school: kindergarten in the elementary schools, ninth grade in the high schools.

2) There should be a pilot of two or three districts, chosen because they are known to be reliable and responsible. Using a pilot would be less expensive, and less threatening to current funding.

3) The reform should be piloted in those schools already performing at or above grade level in reading and math. Starting the reform in schools that are already failing too many students is a bad way to go.

4) Parents should be involved in any implementation plan.

5) School staffs should have the right to opt in or out of the reform.

6) Administrative staff at all levels should receive immediate training to refocus staff on their new roles, as well as to understand the laws and mandates and work with the new budget.

7) Considerable training should also be provided to teachers and other staff in alternative approaches to instruction, flexible assessment, and informal assessment.

8) Guidelines should be developed for informal school-based assessments.

APPENDIX B:

A Legal Analysis of *Focus on Learning: Draft Report on Reorganizing Special Education in New York City*

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September 30, 1995

N.B. This document represents an external and impartial legal analysis of the draft report on reorganizing special education in New York City.[1]

The legal boundaries for the proposed reorganization are drawn from two levels, federal and state.[2] On the federal level, the applicable sources are 1) the Individuals with Disabilities Education Act (IDEA),[3] and 2) Section 504 of the Rehabilitation Act (§504),[4] along with its companion legislation, the Americans with Disabilities Act (ADA).[5] On the state level, the applicable sources are New York's special education legislation and regulations.[6]

The primary focus of this legal analysis will be programmatic issues, as evidenced by case law under the applicable legislation and regulations. Given only secondary attention here, financial issues[7] are to be treated in a separate report forthcoming from a different outside consultant.

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[1] NORM FRUCHTER, ROBERT BERNE, ANN MARCUS, MARK ALTER & JAY GOTTLIEB, FOCUS ON LEARNING: DRAFT REPORT ON REORGANIZING SPECIAL EDUCATION IN NEW YORK CITY (1995)(NYU Institute for Education and Social Policy). This target document is referred to in the subsequent footnotes as the "Report."

[2] The analysis does not include local contractual commitments, in terms of collective bargaining agreements, and their relationship to federal and state mandates. See, e.g., Shea v. Tisch, 870 F.2d 786 (1st Cir. 1989).

[3] 20 U.S.C. §1401 et seq. The pertinent regulations are found at 34 C.F.R. Part 300.

[4] 29 U.S.C. §794. The pertinent regulations are found at 34 C.F.R. Part 104. See generally PERRY ZIRKEL & JEANNIE KINCAID, SECTION 504 AND THE SCHOOLS (1994)(LRP Publications). For the state source, see Kathy Ahearn, Lawrence Gloeckler & Arthur Walton, State Education Department Memorandum re: Guidelines for School Districts Regarding the Rights of Students under §504 of the Rehabilitation Act of 1973.

[5] 42 U.S.C. §§12131-12134 (Title II-A). The pertinent regulations are found at 28 C.F.R. Part 35. Given the close consanguinity of §504 and the ADA, these statutes will be referred to jointly as "§504/ADA."

[6] N.Y. EDUC. LAW §4401 et seq.; N.Y. EDUC. COMM'R REGS. tit. 8, Part 200. The state law sources include the recent amendments "as a result of initiatives to provide educational agencies greater programmatic flexibility and fiscal efficiency." Lawrence Gloeckler, State Education Department Memorandum re: 1995 Legislative and Regulatory Changes Affecting Special Education 1 (August 1995).

[7] For a sampling of such court decisions on the federal level, see, e.g., Washington v. United State Dep't of Educ., 905 F.2d 274 (9th Cir. 1990); Louisiana State Bd. of Elementary & Secondary Educ. v. United States Dep't of Educ., 881 F.2d 205 (5th Cir. 1989); Commonwealth of Massachusetts Dep't of Educ. v. United States Dept of Educ., 837 F.2d 536 (1st Cir. 1988); Petties v. District of Columbia, 881 F. Supp. 63 (D.D.C. 1995); Stockton v. Barbour County Bd. of Educ., 884 F. Supp. 201 (D. W. Va. 1995). For a sampling of such court decisions based, at least

The proposed reorganization is new, but the problem it addresses is not a new one in New York City,[8] which has had a long and full history of special education litigation.[9] Interestingly, none of these published court decisions conflicts with or precludes any of the recommendations of the Report. For example, the consolidated court cases in *Jose P. v. Ambach,*[10] which are subject to ongoing enforcement,[11] result in a school-based model, a centralized monitoring office (including a "parent and advocacy group" liaison function), and an alternative dispute resolution mechanism that move in the same rather than opposing direction as the Report's recommendations.[12]

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in part, on New York law, see, e.g., Fallis v. Ambach, 710 F.2d 49 (2d Cir. 1983); Andrew H. v. Ambach, 600 F. Supp. 1271 (S.D.N.Y. 1984); Long Island Ass'n for Children with Learning Disabilities, Inc. v. Sobel, 572 N.Y.S.2d 787 (App. Div. 1991), appeal dismissed, 578 N.Y.S.2d 880 (1991); Ferncliff Manor for the Retarded, Inc. v. Ambach, 497 N.Y.S.2d 512 (App. Div. 1986); Lowell Sch., Inc. v. Ambach, 466 N.Y.S.2d 785 (App. Div. 1983); Organization to Assure Serv. for Exceptional Students, Inc. v. Ambach, 449 N.Y.S.2d 952 (App. Div. 1981); Matter of Kaye, 388 N.Y.S.2d 620 (App. Div. 1976); Matter of Gano, 432 N.Y.S.2d 764 (Sup. Ct. 1980).

[8] For a comprehensive background review until the early 1980's, which amply illustrates the current problems of insufficient resources, minority overrepresentation, bloated bureaucracy, reform plans, and judicial intervention, see Joseph Viteritti, Educating the Handicapped, in ACROSS THE RIVER: POLITICS AND EDUCATION IN THE CITY (1983)(Holmes & Meier Publ.); see also Michael Rebell, Educational Opportunities for Children with Handicaps, in JUSTICE AND SCHOOL SYSTEMS: THE ROLE OF THE COURTS IN EDUCATION LITIGATION 22 (Barbara Flicker ed., 1990); Michael Rebell, Implementation of Court Mandates Concerning Special Education: Problems and the Potential, 10 J.L. & EDUC. 335, 346-56 (1981).

[9] See, e.g., Adler v. Education Dep't, 760 F.2d 454 (2d Cir. 1985); Jose P. v. Ambach, 669 F.2d 865 (2d Cir. 1982), on remand, 557 F. Supp. 1230 (E.D.N.Y. 1983), stipulations, Nos. 79 C 270, 560, and 2562 (Aug. 3, 1988); Zvi D. v. Ambach, 694 F.2d 904 (2d Cir. 1982); Lora v. Board of Educ., 623 F.2d 635 (2d Cir. 1980), on remand, 587 F. Supp. 1572 (E.D.N.Y. 1984); Reid v. Board of Educ., 453 F.2d 238 (2d Cir. 1971), on remand, 13 EDUC. DEP'T REP. 117 (1973); Ray M. v. Board of Educ., 884 F. Supp. 696 (E.D.N.Y. 1995); Hope v. Cortines, 872 F. Supp. 14 (E.D.N.Y. 1995); Michael M. v. Board of Educ., 686 F. Supp. 995 (E.D.N.Y. 1988); Vander Malle v. Ambach, 667 F. Supp. 1015 (S.D.N.Y. 1987); Manuel R. v. Ambach, 635 F. Supp. 791 (E.D.N.Y. 1986); New York City Board of Educ. v. Ambach, 452 N.Y.S.2d 731 (App. Div. 1982); Matter of Charles, 420 N.Y.S.2d 173 (Sup. Ct. 1979); cf. Riley v. Ambach, 668 F.2d 635 (2d Cir. 1981); Andrew H. v. Ambach, 600 F. Supp. 1271 (S.D.N.Y. 1984).

[10] 669 F.2d 865 (2d Cir. 1982), on remand, 557 F. Supp. 1230 (E.D.N.Y. 1983).

[11] Jose P. v. Sobol, Nos. 79 C 270, 79 C 560, and 79 C 2562 (S.D.N.Y. Aug. 3, 1988) (stipulations).

[12] The Report may be seen as a refinement, or second stage, in the same reform movement.

This legal analysis first addresses the proposal as a whole and then those elements or recommendations that merit special attention.

OVERALL PROPOSAL

The proposal as a whole largely is well within the legal boundaries of the IDEA, §504/ADA, and corollary New York state special education law. Rather than providing major conflict, the overall thrust of the recommendations follows the direction of the presumption or preference for the least restrictive environment (LRE) in terms of maximizing mainstreaming.[13] Although the overwhelming weight of the proposal fits well within the prevailing legal boundaries, a few of the recommendations merit cautious caveats.

MERGED FUNDING STREAMS INTO A SINGLE ENRICHMENT ALLOCATION

One of the key recommendations of the proposal is to merge all federal and state compensatory and preventive funding, as well as those generated by special education classes, to benefit not only students classified as disabled but also at-risk and all other students.[14] Aside from financial issues in the level of state funding, addressed at least in part by the proposal for a five-year "hold harmless" waiver,[15] and in the utilization of IDEA funds, such as the supplanting v. supplementing issue,[16] the potential programmatic problem with this well-intended recommendation is the possible conflict with the individual entitlement for free appropriate public education (FAPE). Akin to the problem of trying to merge the conflicting paradigms of regular education, which emphasizes a collective approach, and special education, which emphasizes an individual approach,[17] a child eligible under the IDEA is entitled to FAPE, with cost neither being the controlling criterion nor a defense to the full continuum of placement opportunities.[18] Thus, even if a merged approach may provide more "bang for the buck" in terms of at-risk or all children, it may not deprive the IDEA-eligible child of FAPE.[19]

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[13] See, e.g., Mavis v. Sobol, 839 F. Supp. 968 (N.D.N.Y. 1993); Board of Educ. v. Sobol, 610 N.Y.S.2d 426 (Sup. Ct. 1994). For corresponding case law in other jurisdictions, see, e.g., Sacramento Unified Sch. Dist. v. Rachel H., 14 F.3d 1398 (9th Cir. 1994), cert. denied, 114 S. Ct. 2679 (1994); Doe v. Board of Educ., 9 F.3d 455 (6th Cir. 1993), cert. denied, 114 S. Ct. 2679 (1994); Oberti v. Board of Educ., 995 F.2d 1204 (9th Cir. 1993). This direction toward inclusion does not, as the Report recognizes, exclude segregated settings in the full continuum of placement options where evidently justifiable. See, e.g., Board of Educ. v. Illinois State Bd. of Educ., 41 F.3d 1162 (7th Cir. 1994); Clyde K. v. Puyallup Sch. Dist., 35 F.3d 1396 (9th Cir. 1994). Although the focus of this case law has been the IDEA, §504 and the ADA have parallel LRE, or integration, requirements. 34 C.F.R. §104.34(a)-(b); 28 C.F.R. §35.130(d).

[14] Report, supra note 1, at 15-16.

[15] Report, supra note 1, at 19 and 49. This issue is viewed as largely a regulatory matter, within the discretion of state authorities depending on their commitment to the proposed reform.

[16] See, e.g., Washington v. United States Dep't of Educ., 905 F.2d 274 (9th Cir. 1980).

The recommendation's proviso maintaining "appropriate safeguards to preserve the intent of special education funds"[20] is ambiguous, but it appears to be aimed at special state legislative hold-harmless arrangements for the overall level of such funding rather than the individual procedural safeguards under federal law for each eligible child's FAPE. Consequently, the proviso warrants expansion and clarification to apply not only to the overall level of funding but also to the individual entitlement to FAPE.[21]

SCHOOL-BASED MODEL WITH FUNDING INCENTIVES

The essential premise of the proposal is to structure fiscal incentives such that the focus for delivery of services is at the school site and that the criterion is improved instructional outcomes. Although the IDEA and §504/ADA put the primary responsibility at the district level, they are neutral to and, thus, permissive of arrangements that accountably delegate authority to the school site.[22] Current federal policies for reauthorization of the IDEA emphasize and encourage an integrated model with an outcomes focus.[23] Similarly, subject to the aforementioned[24] caveat about the individual entitlement to FAPE, including the full continuum of alternative placements,[25] the restructuring of funding formulas to place an incentive on integrated interventions that "fix" the instructional environment[26] is a matter of state political will unimpeded by federal legislative barriers.

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[17] See Bruce Meredith & Julie Underwood, Irreconcilable Differences: Defining the Rising Conflict between Special and Regular Education, 22 J.L. & EDUC. 195 (1995).

[18] See, e.g., Leslie Collins & Perry Zirkel, To What Extent, If Any, May Cost Be a Factor in Special Education Cases? 71 WEST'S EDUC. L. REP. 11, 24 (1992). There is some authority for a balancing approach in New York. See, e.g., Doe v. Anrig, 692 F.2d 800, 806-08 (1st Cir. 1982).

[19] To the extent that insufficient resources make this tension inevitable, the opting for what is judged to be the most cost effective approach may be an exercise in prudent risk management.

[20] Report, supra note 1, at 16.

[21] Cf. Jose P. v. Ambach, 557 F. Supp. 1230, 1243 (E.D.N.Y. 1983)(one of the compliance priorities for the new special master was "due process protections and language guarantees for parents").

[22] Particularly understandable where the school system is as large as New York City's, such delegation was recognized in the original Jose P. consent decree's establishment, by April 15, 1981, of school-based support teams. UCP v. Board of Educ., Nos. 79 C 560 and 79 C 2562 (E.D.N.Y. Feb. 23, 1980), at 15. Its modern analog, in the form of a "new school-based model," was judicially endorse in the latest Jose P. stipulations. Jose P. v. Sobol, Nos. 79 C 270, 79 C 560, and 79 C 2562 (E.D.N.Y. Aug. 3, 1988), at 5.

INSTRUCTIONAL SUPPORT TEAM

An interrelated element of the proposal is school-based informal assessments and intervention strategies via instructional support teams (IST's) that obviate or at least reduce the need for formal special education.[27] This quick-response, pre-referral strategy is not only on the beam with leading professional norms but also within the bounds of the applicable legal mandates. Such a strategy may be formalized by local policy or state law. For example, in Pennsylvania the IST process is expressly incorporated in the revised regulations.[28] The key caveats, as illustrated by said regulations and as recognized at least in part by the Report, are that: 1) a full complement of support services must be available to the IST;[29]and 2) a prompt timeline should be specified so as not to block or delay formal multi-disciplinary (i.e., Committee on Special Education) team evaluations,[30] where appropriate.[31]

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[23] See, e.g., Feds Eye Major Changes to IDEA, The Special Educator, Feb. 4, 1994, at 196, 206-07; see also OSEP Chief Optimistic about IDEA's Future, The Special Educator, Apr. 29, 1995, at 281.

[24] See supra notes 17-19 and accompanying text. In this context, fiscal incentives may not be used to delay or defeat the child's right to an appropriate placement, including prompt payment of tuition to a private residential school. Cf. Petties v. District of Columbia, 881 F. Supp. 63 (D.D.C. 1995); Matter of Charles M., 420 N.Y.S.2d 173 (Sup. Ct. 1979).

[25] 34 C.F.R. §300.551-.552; N.Y. EDUC. COMM'R REGS. tit. 8, §200.6.

[26] Report, supra note 1, at 20 and 51-55.

[27] Report, supra note 1, at 19-20.

[28] 22 PA. CODE §§14.24 and 342.24. Moving in the same direction, New York's recent amendments to §3602 of the Education Law provide support for "direct student support team services," which are defined in new regulations as "consultation and planning by building-level professional staff to design and provide an appropriate and coordinated individualized instructional and support service program for eligible students." Gloeckler Memorandum, supra note 6, at 3-7 [emphasis supplied].

[29] Id. §§14.24(f) and 342.24(g). For example, the services include peer support and exchange; instructional consultation; classroom training; paraprofessional; team teacher; special teacher; and specialist, such as therapist. Id. The Report, supra note 1, at 17 and 22, appears to recognize this need within a school-based context.

The locus of the IST at the school, rather than the district, level is not problematic, but its locus in terms of general, rather than special, education, merits comment. The line between special and regular education is increasingly becoming blurred.[32] Whether the IST is viewed informally or formally on the regular, as compared to special, education side of the line, a district's legal obligations to a child are triggered at the point when the school officials suspect, or have reason to suspect, that the child may be eligible under the IDEA or §504/ADA.[33] Thus, the IST process needs to be carefully attuned to children's needs in terms of not only IDEA but also §504/ADA eligibility; to the extent that this proposed process is not sufficient at any school for a particular child and the parent invokes the statutory procedures (e.g., a Office for Civil Rights complaint or a due process hearing), the district's legal obligations are not suspended until the point that a parent formally requests a CSE evaluation.

TRANSITION TO INTEGRATED SETTINGS

Perhaps the most problematic piece of the "sea change" proposed by the Report is effectuating the transition from segregated, including private, settings to integrated, school-based settings.[34] The Report seems to suggest that such a widespread IEP revision would be a relatively easy matter because it is in the direction of less restrictiveness.[35] However, regardless of direction, the degree of such a revision, assuming that it entailed a material change in the program,[36] would in all likelihood constitute a change in placement,[37] thus triggering the full procedural protections of the IDEA and §504/ADA, including notice with the opportunity for a due process hearing.

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[30] Id. §14.24(g). The IST is a small group, keyed on the regular classroom teacher and immediate instructional suggestions. Id. §342.24. In contrast, the MDT must include under Pennsylvania law, a school psychologist. Id. §342.25(d). In New York, the CSE has responsibility for evaluation as well as placement and must include not only the child's teacher and a school psychologist but also "a representative of [the] district who is qualified to provide or administer or supervise special education, a school physician, and a parent of a handicapped child residing in the ... district." N.Y. EDUC. LAW §4402(1)(b)(1). For the more limited role and membership of subcommittees, see id. §4402(1)(b)(1)(b)(i); N.Y. EDUC. COMM'R REGS. tit. 8, §200.3(c).

[31] The Report, supra note 1, at 21, appropriately maintains the parents' right, independent of the IST, to request a formal multi-disciplinary team evaluation. However, it omits the parents' right to request such an evaluation for a child reasonably believed to be covered by the wider definition of disability under §504/ADA. 34 C.F.R. §104.35; ZIRKEL & KINCAID, supra note 3, at Three:91-Three:100.

[32] See, e.g., Perry Zirkel, Blurring the Line Between Special and Regular Education, The Special Educator, Feb. 4, 1995, at 197.

[33] See, e.g., Hacienda La Puente Unified Sch. Dist. v. Honig, 976 F.2d 487 (9th Cir. 1992); Response to Anonymous, 21 IDELR 998 (OSEP 1993)(IDEA); La Honda Pescadero (CA) Unified Sch. Dist., 20 IDELR 833 (OCR 1993); Senior Staff Memorandum, 19 IDELR 876 (OCR 1993)(§504); see also N.Y. EDUC. LAW §4401-a(1) ("[a]ny pupil suspected of having a handicapping condition").

To the extent that the proposed revision would be a change in placement, the Report's assumption that the IST would be a sufficient decision making team[38] appears unwarranted. The CSE or its subcommittee[39] would appear to have the exclusive authority. In any event, regardless of the team allowed by state regulations, the parent must be part of the placement process and is entitled to the procedural due process safeguards of the IDEA and §504/ADA if s/he objects to the appropriateness of the change. When triggered, the question of what is the appropriate, including least restrictive, placement, for the child is an individualized matter to be determined by an impartial decision maker.[40] The due process protections, like the other requirements of the IDEA's Part B, may not be subject to waiver.[41]

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[34] In a partially analogous case, the federal district court ruled against a blanket approach not only for identifying learning disabled students (the "50% discrepancy" rule) but also for disapproving residential placements for such students (based on the need for individualization within the full continuum); however, the Second Circuit Court of Appeals reversed for failure to exhaust administrative remedies, and the trial court provided a more limited ruling on the basis of § 504. Riley v. Ambach, 508 F. Supp. 1222 (E.D.N.Y. 1980), rev'd, 668 F.2d 635 (2d Cir. 1981), further proceedings, 554:180 (E.D.N.Y. 1982).

[35] Report, supra note 1, at 49.

[36] The child's point on the continuum is a part of the IEP. N.Y. EDUC. COMM'R REGS. tit. 8, §200.4(c)(2)(iv).

[37] Merely moving the child's physical location is not, per se, a change in placement. See, e.g., New York City Sch. Dist., EHLR 506:223 (N.Y. SEA 1984); Newton (MA) Pub. Sch., 21 IDELR 811 (OCR 1994). Other factors include, for example, whether the IEP needs to be revised and whether the interaction with nondisabled children changes. See, e.g., Letter to Fisher, 21 IDELR 992 (OSEP 1994); cf. Greenport Union Free Sch. Dist., 21 IDELR 269 (N.Y. SEA 1994); Ventura (CA) County Office of Educ., 16 EHLR 359 OCR 1989). Although the determination is an individual matter, moving to a different, albeit less restrictive, point on the continuum likely triggers the procedural safeguards, such as notice and the opportunity for a due process hearing. See, e.g., Letter to Fisher, 21 IDELR 992 (OSEP 1994); Framingham (MA) Pub. Sch., 18 IDELR 475 (OCR 1991).

[38] Report, supra note 1, at 49.

[39] N.Y. EDUC. COMM'R REGS. tit. 8, §200.3(c)(5).

SCHOOL-BASED INTENSIVE PROFESSIONAL DEVELOPMENT

Another recommendation is to provide fiscal resources and structural support for intensive professional development to increase the school-based capacity to assist all children.[42]

Although the IDEA recognizes the importance of personnel development and technical assistance, the focus is at the state level[43] rather than being tapered to the local, much less school level. Similarly, the courts have not been particularly responsive to sharpened concerns about teacher training under the IDEA.[44] Nevertheless, the current status of applicable federal laws is more akin to wide boundaries rather than high barriers.

INDEPENDENT ACCOUNTABILITY AND QUALITY ASSURANCE OFFICE

The functions envisioned for the proposed office include compiling accountability reports and coordinating Parent Information and Advocacy Teams.[45] Although this proposed office fits with the oversight tradition in predecessor New York City litigation,[46] with particularly close consanguinity to the Office of the Director of Special Education Monitoring in Jose P.,[47] its broad mix of functions broaches, although not necessarily breaches, the issue of impartiality.[48] Giving the office the functions of not only monitoring, including publicly reporting, the extent of compliance but also recruiting and training parent advocacy teams raises questions as to the efficacy, if not legality, of such teams serving as an informal, first-step appeal mechanism.[49]

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[40] See, e.g., Brimmer v. Traverse City Area Pub. Sch., 872 F. Supp. 447 (W.D. Mich. 1994)(change to less restrictive setting precluded by significant procedural violations).

[41] Cf. Letter to Brooks, 22 IDELR 888 (OSEP 1995).

[42] Report, supra note 1, at 14 and 22-23.

[43] 34 C.F.R. §§300.380-.383 and 300.555. Interesting in the context of reform, these regulations call for "adopting, if appropriate, promising practices ... proven effective through research or demonstration." Id. §300.382(c). Moreover, the regulations do not limit the amount of IDEA funds allocated to personnel development. Letter to Hayes, 18 IDELR 737 (OSEP 1992).

[44] See, e.g., Sioux Falls Sch. Dist. v. Koupal, 526 N.W.2d 248 (S.D. 1994), cert. denied, 115 S. Ct. 2580 (1995); cf. Gaskin v. Commonwealth, 22 IDELR 789 (E.D. Pa. 1995).

[45] Report, supra note 1, at 24-25 and 45-47.

[46] See, e.g., Jose P. v. Ambach, 669 F.2d 865 (2d Cir. 1985); Aspira v. Board of Educ., 423 F. Supp. 647 (S.D.N.Y. 1976). New York is not alone in such matters. For example, a federal district judge in Baltimore recently sanctioned several administrators and transferred all authority for special education to a new administrator reporting directly to the mayor. Lynn Schnaiberg, Baltimore Seeks Plan to End Spec. Ed. Suit, Education Week, Sept. 13, 1995, at 5.

PROCEDURES TO DISCOURAGE MINORITY OVERREPRESENTATION

In contrast, although identifying the disproportionate representation of students of color in special education,[50] the Report does not separately address this problem in its recommendations.[51] Although the proposal's general emphasis on comprehensive integrated intervention may well mitigate the overrepresentation problem, particularly in segregated settings, this solution is not likely to be sufficient based on the lack of major specialized, albeit supplementary, recommendations.

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[47] Jose P. v. Sobol, Nos. 79 C 270, 79 C 560, and 79 C 2562 (Aug. 3, 1988), at 44. In partial contrast, the Aspira decree employed the enforcement strategy of a court-appointed special master.

[48] Cf. Elaine Drager & Perry Zirkel, Impartiality Under the Individuals with Disabilities Education Act, 86 WEST'S EDUC. L. REP. 11 (1993)(hearing and review officers). New York has had a long line of litigation focused on the state commissioner's role at the review-officer level. See, e.g., Burr v. Ambach, 863 F.2d 1071 (2d Cir. 1988), vacated sub nom. Sobol v. Burr, 492 U.S. 902 (1989), aff'd on remand, 888 F.2d 258 (2d Cir.), cert. denied, 494 U.S. 1005 (1991); Louis M. v. Ambach, 714 F. Supp. 1276 (N.D.N.Y. 1989); Holmes v. Sobol, 690 F. Supp. 154 (W.D.N.Y. 1988); Hiller v. Board of Educ., 674 F. Supp. 73 (N.D.N.Y. 1987).

[49] By way of contrast, in the Jose P. stipulations, the parent and advocacy function seems to be structurally separate from the informal dispute resolution, or mediation, function. Id. at 47-51. In any event, to the extent that this informal "informal appeal" mechanism includes mediation, it moves in the same direction as the amendments to state law. N.Y. EDUC. LAW §§4404 and 4404-a.

[50] Report, supra note 1, at 8-11. This concern is one of the major current priorities of the federal Office for Civil Rights (OCR), which enforces §504/ADA. See, e.g., OCR: Numbers Don't Lie about Minorities in Special Education, The Special Educator, May 13, 1995, at 308. It is also a continuing concern of the courts. See, e.g., Crawford v. Honig, 37 F.3d 485 (9th Cir. 1994); Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984). In prior litigation arising in New York City, on remand in Lora, the court included stipulations for nondiscriminatory assessment standards and procedures, which were the results of its advisory panel of experts. Lora v. Board of Educ., 587 F. Supp. 1572 (E.D.N.Y. 1984).

[51] It also does not address the legal requirements for limited English proficient students (e.g., N.Y. EDUC. COMM'R REGS. tit. 8, Part 154) and their intersection with those for students with disabilities, which is addressed in part by the consolidated cases in the Jose P. stipulations. For a legal overview, see, e.g., Perry Zirkel, "SPED/LEP": Special Education for Limited English Proficient Students, 69 WEST'S EDUC. L. REP. 181 (1991).

The only specialized, but not major, recommendation was to put the burden on the CSE to demonstrate that the student's purported disability was not "primarily the result of social, cultural or economic disadvantage."[52] This recommendation has three problems in terms of minority overrepresentation. First, it is much broader than the racial/ethnic lines of the distribution of African American and Hispanic students in special education. Second, although its comports with the state statute's exclusion of children whose "educational needs are due primarily to ... environmental, cultural or economic factors,"[53] it is at least arguable that said exclusion conflicts with and thus is preempted by the IDEA's much narrower limit on eligibility. More specifically, the IDEA only provides such an exclusion for one of its thirteen eligibility categories –specific learning disability.[54] Third, it is not clear to whom the CSE must make this showing. If the intended forum is the impartial due process hearing or, ultimately, the court, does this required demonstration, where the CSE has determined that the exclusion does not apply, square with the burden of persuasion being on the school district[55]?

AUTHORITY FOR PRE-SCHOOL PROGRAMS

The Report contains a cluster of sweeping recommendations with regard to the authority and funding for pre-school programs for children with disabilities.[56]

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[52] Report, supra note 1, at 26.

[53] N.Y. EDUC. LAW §4401(1). The statute specifies an additional exclusion for educational needs primarily attributable to "unfamiliarity with the English language," which presumably be included with the other exclusionary factors in the same recommendation.

[54] 34 C.F.R. §300.7(b). Serious emotional disturbance has an exclusion for non-overlapping social maladjustment. Id. But, even if social maladjustment is viewed as environmental, cultural, or economic, §504 has no such exclusion. 29 U.S.C. §706(8)(B); 34 C.F.R. §104.3(j). To the extent that the condition, in this case social maladjustment, is a physical or mental impairment, for example, oppositional defiance disorder (ODD), it is not excluded even though its origins may be environmental, cultural, or economic.

[55] See, e.g., Oberti v. Board of Educ., 995 F.2d 1204, 1219 (3d Cir. 1993); Pavilion Cent. Sch. Dist., EHLR 509:271 (N.Y. SEA 1987); In re New York City Sch. Dist., EHLR 504:331 (N.Y. SEA 1983); In re Ramapo Cent. Sch. Dist., EHLR 501:316 (N.Y. SEA 1979); cf. Matter of Handicapped Child, 20 EDUC. DEP'T REP. 357 (1991); 18 Op. Comm'r Educ. Dep't 397 (1979). But cf. Hiller v Brunswick Cent. Sch. Dist., 743 F. Supp. 958 (N.D.N.Y. 1990).

[56] Report, supra note 1, at 38-39.

Although the requisite revisions in state regulations and commitments are not negligible,[57] they are primarily fiscal rather than programmatic matters and, thus, beyond the rubric of this analysis.[58] To the notable extent that the recommendations are aimed at attaining more efficiency and effectiveness in serving such children, they fit the federal flow toward early intervention.[59]

CONCLUSION

The future of the Report is largely a matter of local and state commitment rather than of federal or state legal restraint. The IDEA and §504/ADA generally present ample boundaries rather than acute barriers in relation to most of the Report's recommendations. Similarly, aside from fiscal matters, the recommendations generally flow in the same direction rather than against the prevailing current of the relevant state statutes and regulations. The occasional legal problem in terms of programmatic requirements is relatively peripheral or potential, resolvable by means of fine-tuning in the final preparation and transitional implementation of the Report. Thus, the key question is not one of obtaining legal waivers as much as avoiding political and professional wavering.

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[57] Although the recommendations would require a significant change in fiscal commitment, they do not appear likely to necessitate special education legislation tailored to New York City, which, in any event, is not without precedent. See, e.g., N.Y. EDUC. LAW §4402(1)(b). Rather, other than funding, the recommendations seem to largely require delegation of local authority. As the Report also recognizes, such changes may help address problems subject to pending litigation. Ray M. v. Board of Educ., 884 F. Supp. 696 (E.D.N.Y. 1995).

[58] See supra note 7 and accompanying text.

[59] Recent changes in state law also evidence an increased concern with preschool special education programs. N.Y. EDUC. LAW §4410; see also Gloeckler Memorandum, supra note 6, at 27-34.

APPENDIX C:

Review of Financing Dimensions from *Focus on Learning: Draft Report on Reorganizing Special Education in New York City*

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Please note that Professor Parrish's review is based on the *Draft Report.* The final version of *Focus on Learning* has been extensively revised to respond to many of the issues Professor Parrish's analysis raises.

Introduction

This paper is written in response to the draft version of *Focus on Learning*, a report produced by members of a study team at New York University's Institute for Education and Social Policy. Throughout this review, the paper will be simply referred to as *Focus*. However, it is important to clarify that the report being reviewed, and the only version available to this author, was the *draft* version of *Focus*. This is of note because some of the lack of clarity and detail in the draft may be added to the final *Focus* report. *Focus* presents a proposal for reorganizing special education for the New York City schools. The primary impetus for this report emanated from New York City Schools Chancellor, Ramon Cortines, who made the improvement of special education one of his top priorities. The purpose of this paper, which is designed as an attachment to *Focus*, is to review and comment on its finance related dimensions.

Overall, this paper concludes that the *Focus* report contains a well conceptualized set of provisions for the reform of special education in New York City. The evidence presented for a need to change is compelling and the recommendations are generally well aligned with special education fiscal policy reform agendas being developed across the country. However, questions are raised about the implementation details of the recommended finance provisions. Concerns are expressed that the promised fiscal incentives to encourage the full range of reform activities specified in this report, which will entail considerable new responsibilities at the local level, may be insufficient. The objectives laid out in *Focus* are formidable. As the new focus is local schools, the investment that will be needed to successfully implement the many objectives at this level will be considerable and will require a firm commitment on the part of the City and participating districts. Cost savings seem unrealistic. However, it is believed that considerable efficiency gains could be realized through the implementation of the *Focus* recommendations, and possibly without the requirement of additional funds. However, this would seem to require an even bolder plan for the redistribution of existing resources than is outlined in *Focus*. For example, the provisions for redistributing funds from special to local schools may need to be more clearly specified and enhanced.

The paper is divided into six sections. The first discusses some of the guiding assumptions underlying the finance recommendations of *Focus*, and attempts to place them in a larger context. The next section summarizes and responds to some of the specific elements of the *Focus* finance plan. The third section attempts to provide a national context for considering the *Focus* recommendations, presenting issues and providing examples. It includes description of some of the experiences of states implementing related reforms and a discussion of what might be learned from these prior experiences. Last, New York State's current special education fiscal policies and recommendations being considered for reform are discussed in relation to the new financing provisions presented in *Focus.*

At the onset of these remarks, the importance and relevance of the finance-related recommendations in *Focus* should be noted. The essence of *Focus* is, after all, *instructional* program reform. The Executive Preview ambitiously recommends "a new direction in education to improve outcomes for all New York City public school students." What has this to do with special education finance? First, at the core of these recommendations is the concept of extending the permissible use of special education funds so that highly trained staff and other resources may be used to benefit a broader range of students.

Second, the integral relationship between instructional program reform and finance policies is increasingly being recognized across the country. Special education finance issues are an important part of the U.S. Department of Education's recommendations in conjunction with the reauthorization of the Individuals with Disabilities Education Act (IDEA), and current special education fiscal policies are actively being reviewed in over half the states. (CSEF Survey, 1995) One of these states is New York, which will be discussed further in the last section of this paper. This level of activity in the area of special education finance policy formation is unprecedented since the passage of the IDEA, and much of it is driven by the increasing realization of the clear linkage between fiscal policies and the ways in which instructional programs are provided.

Traditional fiscal policy questions have dealt with issues such as whether available funds are sufficient to "get the job done" and whether they are allocated in a way that is "fair to all." Although these issues relating to adequacy and equity are still of great importance, it is increasingly being recognized that the *criteria* used to determine the amounts of funds to be allocated and *where* they are directed can profoundly affect the manner and type of instructional services received by students. They can affect where services are provided, by whom, and the extent to which they are offered in inclusive, as opposed to more restrictive, settings.

The impact of fiscal policy on program provision does not result through the specification of this type of service detail, but through the more subtle influences found in fiscal incentives and disincentives for certain types of practice and because of traditional concerns related to fiscal accountability. For example, it is believed that much of the separate instruction that has come to be the norm for many special and compensatory (Title 1) education students throughout the country in the form of pull-out classes results much more from concerns about commingling funds than from a belief in the superiority of pull-out instruction (McLaughlin, 1995).

In short, in their attempts to "reorganize special education in New York City," the authors of *Focus* have been wise to attend closely to fiscal issues and to carefully consider the ways in which fiscal policies may require revision to create incentives in favor of the instructional reforms they advocate. Education reformers overlooking fiscal provisions governing the programs they hope to alter do so at their peril.

"GUIDING ASSUMPTIONS" OF *FOCUS* AS THEY RELATE TO FINANCE

The finance recommendations found in *Focus* are clearly developed with these types of concerns and issues in mind. For example, traditional *fiscal* accountability concerns are appropriately redirected, as aptly stated in the title, *Focus on Learning*. The basic orientation of this report is well described in the Executive Preview, "This model reconfigures ... fiscal allocation policies to focus on improving ... desired educational outcomes." (p. i) Rather than making the primary accountability concern whether educational resources are being used *legally*, they suggest a renewed focus of whether they are being used *wisely*. The most relevant question becomes whether finite educational resources are being used in the most *efficient* manner possible to maximize a broad range of education goals for *all* New York City students.

Focus is also clearly cognizant of the importance of fiscal incentives and disincentives as powerful drivers of education program policies. The authors lay out a vision of a "school-based" instructional service model, and then attempt to create fiscal policies that will support it. For example, the plan clearly calls for the creation of "significant fiscal incentives to educate children in their home schools, to discourage the over-referral of children to special education, and to provide a broader range of placement options for children with disabilities." At least conceptually, appropriate instructional goals are specified first, and then fiscal policies are crafted to support them. However, concerns that these fiscal incentives are insufficient, or at the least not clearly delineated, will be discussed in a following section of this review of the

Focus report.

Several of the "guiding assumptions," specified in *Focus* are relevant to the discussion of finance. (p. 13) First, it is stated that many students are referred to special education because of the inability of the general education system to meet their needs. "If general education could be reconfigured to more effectively meet the needs all children bring to schools, including language needs, significantly fewer students would be referred to special education." This is a key guiding assumption, because many of the fiscal recommendations in *Focus* call for the more flexible use of special education resources to better meet the needs of all students. It also leads to a subsequent "guiding assumption" that in addition to increased flexibility, schools will need additional resources to provide professional development to be defined and provided at the school site. However, where these resources will come from seems unclear in the plan specified in *Focus* and is a topic to be discussed in more detail in a subsequent section.

Second, "whenever possible and appropriate ... students with disabilities should be educated in schools close to their home and be held to academic standards commensurate with their peers." The essence of these recommendations is that students with disabilities should be redirected to their neighborhood schools to the greatest extent appropriate to their needs, and that the supplemental resources allocated to them must be designed to follow them back to these neighborhood schools. In these local schools they should be educated in the broader school environment to the greatest extent appropriate and the special resources that accompany them should be used in a flexible manner in ways that will allow them, as well as their general education peers, to receive maximum benefit. However, the extent to which the revenues associated with the full range of services used to support students in special schools will follow them back to their neighborhood schools is not clearly specified.

The general guiding principles contained in *Focus* are in keeping with the "unified schooling" concepts described by McLaughlin and Warren (1992). The concept of consolidating special education funding and services with that of other categorical program areas and with general education at the local school level is also discussed in McLaughlin (1995). In essence, the latter report suggests that the tradition of segregating and isolating students who are entitled to receive supplemental resources to meet their special needs has largely been driven by funding provisions, primarily associated with the original Title 1 program. These provisions emphasized that the additional resources to which these students are entitled must *supplement and not supplant* the base levels of resources to which they are entitled. The cleanest way to assure this separation of resources and to demonstrate that they were truly supplemental was to provide these services in settings separate from other students.

Lately, however, this approach is being broadly challenged. As described by McLaughlin:

> ...concern about the lack of coordination and redundancy across programs at the classroom level, as well as the lack of strong evidence to support the efficacy of much of the pull-out instruction, prompted school administrators to begin to examine new models of collaboration and consolidation across categorical programs (Allington, et al; Madden & Slavin, 1986; Bulgren & Carta, 1992.)

At the same time, considerable new emphasis has been focused of late on the "least restrictive environment" provisions that have always been specified in the IDEA. For example, Section 300.550 of Title 34, *Code of Federal Regulations* states:

> ...special classes, separate schooling or other removal of handicapped children from the regular educational environment occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

New York City schools appear to be well behind the nation in this emphasis on integrated settings for students with disabilities. As described in *Focus*, while nationally 19.8 percent of students with disabilities are educated in separate classes, the corresponding figure for New York City is over 60 percent.

Others have raised questions about the efficiency of highly categorical program provision. The state director of special education in Florida raised the question of the very meaning of "special" programs when over half of the school children in her state qualify for one type of special program or the other. The cost of separate programming is also often raised as an issue. Categorical programs generally require the maintenance of parallel administrative structures, separate schools with a separate cadre of school administrators, special transportation, and costly eligibility assessment. As an example of the latter, the average cost of special education assessment was found to be $1,206 per special education student per year in a nationally representative study conducted by Moore, et al, in 1988. In current dollars, this is estimated to be about $1,650 per student, as a national average. The authors of *Focus* estimate this cost in the New York City schools to be in excess of $2,000 (p. 55).

It is increasingly contended that the high cost of maintaining dual education systems comes at the expense of general education, and that this has become a vicious cycle. The more the general education sector becomes depleted of resources, the less it is able to meet the broad range of needs of the children it serves, and the more students become identified as requiring specialized services. As stated in *Focus*, "In a crippling economic setting that increases needs and reduces resources, special education works for too few students while the limitations of general education force more students into special education." (p. 43)

The recommendations contained in the *Focus* report fit nicely within these general national trends. The final "guiding assumption" specified for this report, however, is very representative of a national dilemma in moving toward these more flexible, cross-categorical models of instructional provision. As stated in the report, "Finding the checks and balances between school-generated flexible learning environments and systemic mechanisms for insuring equity and accountability in provision of resources and in educational outcomes, is critical to improving teaching and learning for all our students." A national conference held on this topic at the National Association of State Directors of Special Education (NASDSE), concluded that the key to this type of school reform is "trust." (NASDSE Conference on Goals 2000, October 27-28, 1994, Alexandria, Virginia) This will also be important element to allowing the *Focus* recommendations to proceed, but as described in the *Focus* report, should soon be replaced with measurable student results-based accountability mechanisms.

While the importance of lowering costly, and sometimes inefficient, categorical barriers to more unified instructional program provision was broadly recognized at the NASDSE meeting, the reasons why such fiscal accountability mechanisms as "supplement and not supplant" are in place were never too far from the discussion. In essence, it seemed to boil down to the ability to trust those local administrators to whom more flexibility in the use of categorical funds and resources is being granted, to "do the right thing." Ultimately, however, trust-based accountability will probably not be good enough and some new form of results-based accountability will need to be developed. As described in *Focus*,

> ...the history of the New York City schools' treatment of students with disabilities suggests that we cannot simply give local schools the resources and the discretion to reconfigure their instructional organization and trust that they will effectively respond to all students' learning needs. Many will, but some, perhaps a distressingly large number, will not. We need educational accountability mechanisms to identify such schools, reverse their unsound practices and, if necessary, find alternative placements for students whose positive learning outcomes are threatened by such practice. (p. 24)

Unfortunately, there is little precedent for this type of accountability in any segment of the public education sector, and widely accepted models for assessing the extent to which individual schools are meeting the needs of *all* students generally do not exist. However, if the traditional models of fiscal accountability that have tended to raise costly barriers between different categories of students and that have led to multi-track educational systems are to be replaced by the more flexible use of categorical funds, some form of results-based accountability will be needed. Such measures can be used to demonstrate that the special needs of children with disabilities, and others, are being met through clear indicators of educational progress. It is not clear whether the formation of an independent Accountability and Quality Assurance Office, as called for in *Focus*, will be sufficient to meet this challenge, but it is important to begin somewhere and if New York City were to be successful in developing such a system, it could lead the nation in this critical area of educational reform. However, it is also important to realize that the development and implementation of a workable system of this type will not come without cost.

For a discussion of finance, it may seem that undue space has been allocated to the topic of accountability. There is a purpose to this, however, and it is due to the strong belief that the key to the success or failure of the proposed finance plan is largely predicated on the development and implementation of a successful results-based accountability system. It is believed that this is an essential element if the suggested transition to a school-based resource allocation model with the degree of flexibility needed to allow resources to be creatively utilized to best meet the needs of all students is to be successful.

A SUMMARY OF THE FINANCE PLAN

Overview of the finance provisions in the "school-based model." Several basic principles underlie the finance plan recommendations specified for the "school-based model" in *Focus*. First, students should be served by their home school unless the most appropriate placement demands a more distant setting. This requirement is not new, and only enforces federal special education law regarding the least restrictive environment (LRE) as specified above. However, it appears that a shift to such a neighborhood school concept for students with disabilities would represent a substantial change in traditional service patterns for New York City schools.

A second important principle of the school-based finance plan is that students transferred to their neighborhood school should carry the full weight of their supplemental support with them. This does not seem to be clearly specified in the plan, however, and will be discussed at greater length below.

Third, all schools would have a specified "enrichment allocation," which is the "total cost of its special education students minus what it would cost if all those students were maintained in general education without additional services or supports." (p. 54) This enrichment allocation could then be combined with all of the school's supplementary allocations, including federal and state compensatory education funds, to meet the needs of all the school's students. Questions in relation to this allocation will also be considered below.

Fourth, transfer payments would accompany the movement of students out of their neighborhood schools. For example, if a student were to move from neighborhood school A to attend a specialized program, school A would have the marginal cost of that program deducted from its enrichment allocation.

Questions/issues relating to the finance provisions of the "school-based model." As noted above, the general principles that underlie the school-based model concept seem sound, and it appears that the authors of *Focus* have made a conscious effort to develop funding provisions that support their vision of program reform. These have been simplified into four basic principles as described above.

Although these general concepts seem sound, there are questions about some of the practical elements of implementing these ideas and about whether some of the implementation provisions outlined in *Focus* are not sometimes in conflict with these basic principles and with one another. For example, most important are key questions about "jump starting" this reform. School districts generally are not known for their flexibility and responsiveness to such systemic reform efforts. Based on its size and some of the statistics cited in *Focus*, New York City may be especially difficult to move toward such far reaching reorganizational provisions. It is not clear from the plan what incentive there will be for an already beleaguered school principal to take on substantial new responsibilities for a broad range of students with disabilities. It would seem that the city's resolve and commitment would need to be crystal clear and that considerable new dollars for training, service provision and capital improvements would need to be clearly available from the onset. The *Focus* authors indicate that they have chosen not to prescribe all of the transition details from the onset and that they recommend phased-in rather than sudden city-wide change. Some of the questions and issues raised below may delve into greater detail than desired at this phase of recommendations, but may also be critical to this reform effort ever getting off the ground.

The first set of questions relate to the plan's intent to have special education students educated in their local schools. This concept makes a lot of sense and to do otherwise (i.e. use special schools when they are not clearly warranted) seems to be in conflict with the LRE provisions of IDEA, as specified above. However, the finance provisions contained in *Focus* are generally described in insufficient detail to be able to say with certainty that they would indeed work to promote this objective. While the authors *intent* in this regard is clear (i.e. to include such incentives), the finance plan as described in the report appears insufficient to determine whether such incentives would really be sufficient to encourage a move of this magnitude on the part of local schooling officials.

For example, it is not clear what motivation exists for local schools, or even how they could afford, to begin serving additional special education students previously receiving their education in remote locations. Just from a practical perspective, there are relatively few "barrier-free" schools in each community school district, as noted in the report. (p. 22) Because of the nature of their disability, this may not be an issue for many of the special education students the plan envisions returning to local schools. However, these limitations could preclude many others from such a transfer, who are sometimes isolated from an education with their non-disabled peers due only to physical disability. Indeed, Assistant Secretary of the U.S. Department of Education, Judith Heumann, who uses a wheelchair, was denied access to the New York City Schools until eighth grade because she was considered a "fire hazard." The point is that even though capital improvements to increase accessability in schools may not be essential for this plan to begin transferring students with disabilities to local schools, they also should not be overlooked in considering long term implementation.

In addition, it appears that the determination of the enrichment allocation is based on the number of special education students actually located in each neighborhood school by various types of setting during a base year. Beyond the base year, this allocation is to be "held harmless." Normally, the "hold harmless" concept means that allocations may go up, but that they will not fall below that received in a base year.

In this case, however, this is not clear. It sounds as if neighborhood schools could only obtain additional resources for student relocations occurring in the first year of this plan. Beyond this, it sounds as if the allocation is locked in for each school in the form of the base allocation. For example, could the allocation rise for a subsequent school year beyond yearly cost inflation factors, and under what conditions would this be allowed? The report states that even if special education enrollments drop in the future, which could occur through the removal of fiscal incentives to continue identifying students, special education funding will not drop. What if enrollments rise? If additional funds are received in this instance, it could serve as an incentive to identify more students beyond the base amount. If they are not received for increasing numbers of students, how could local school officials afford to take in additional students in their enrollment area who had previously been served elsewhere?

Let us refer to students moving from special schools to local schools as "transfer students." Taking some specific examples, how would these transfer students be counted under the calculation of the funding cap for a local school? If they were there on day one of the transition plan, it is assumed that they would be counted under the formula, as described on pages 15 and 53 of the report. What if transfer students were to arrive in year 2 of implementation? Would the cap for that school be recalculated? What would be the impact if new (i.e. non-transfer) students with special needs were to move into the school? How about increased identification among the students originally residing at the school, would this also be fiscally rewarded? These may seem like details, but they are key implementation questions that will determine the ongoing fiscal incentives and disincentives at the school regarding the continuing identification of students with disabilities and the willingness to encourage and accept transfer students.

Even if such students would generate additional dollars for neighborhood schools if they were to transfer in subsequent years, how would this count of new students relate to the funding cap? It would seem to be important that such transfer students be considered as additions to the cap, even if the current count of special education students at the school had fallen below the original number of special education students upon which the cap was based.

Assuming that dollars could follow students from centralized to neighborhood schools in the first year or beyond, how much funding comes with them? There appears to be no provision for the full cost of educating these students in centralized schooling settings to follow them to more inclusive settings closer to home. It seems likely that substantial financial incentives, as well as a considerable investment in education and training, will be needed to prompt any significant movement of students from centralized to neighborhood schools in districts with a strong tradition of separate schooling. Even in the base year calculations, however, it appears that the amount of funds set aside in the "enrichment allocation" is based on cost factors already associated with the school, rather than any attempt to transfer the *full* cost of segregated placements. In short, it is not clear what elements are present in the plan to encourage movement to neighborhood schools, which is a critical component of the plan's success.

To create a true fiscal incentive for this kind of change, a first step might be to model a system where the full amount of special education revenue being generated by all special education students residing in a given local attendance area is calculated, regardless of where these students are actually currently served. This estimate would include the *full* cost of serving each child in a remote setting including *special school administration* and *transportation*. All, or a substantial portion, of this amount would be made available to the neighborhood school. Local school officials and parents could then make a decision about how these funds should best be used. Should a remote, specialized placement be purchased for this child, or should the child be retained in the neighborhood school? With this more substantial funding available, for example, local officials and parents might decide to use the substantial transportation revenues that would be transferred to the local level to make capital investments in the school plant to make it fully accessible.

Beyond the issue of the transfer of students to neighborhood schools, it is not clear what fiscal incentives exist for altered special education provision at the individual school level for the special education students already there. As the amount of enrichment funds appears only to be based on existing enrollments at the school, it appears that the schools will not really receive additional money. It sounds as if all they really will be granted is additional flexibility. This may be sufficient if subsequent additional support for school-based professional development, as called for on page 22, is provided. However, on page 53 of the report it states that the amount of funding received for staff development, and other support costs such as guidance counselors, is based on the count of special education students. In the implementation of this plan it will be important to ensure that as some students are phased out of special education into alternative general education placements, and training needs increase to facilitate this, training funds are not reduced through this provision.

In addition, if these additional training dollars are supposed to come from the enrichment allocation, the full plan seems to be predicated on the concept that less restrictive placements, in general education classrooms, can be provided at *less cost* than in special classes. However, on page 22, it is stated that "the primary purpose of the enrichment allocation is to insure that classroom teachers have the instructional and non-academic supports necessary for effective teaching and learning." Of course, as stated on page 18, "the report does not assume that all students currently placed in self-contained or resource room settings will necessarily be best served in general education environments." If no students are moved from these more restrictive settings, there will be no "enrichment allocation." However, unless it is assumed that general class placements with full support are less costly than self-contained placements, fully integrating these students will also leave no marginal savings in the form of an "enrichment allocation." The concept of additional resources that would be available to fund such activities as faculty training, Instructional Study Teams (ISTs), and meeting the needs of all students seems predicated on the concept that special education students can be served at less cost in inclusive than in restrictive settings.

This assumption hinges on a question heard quite often of late as to whether inclusive special education services cost more or less than more traditional, restrictive placements. In fact, the evidence is far from clear. While some educators argue that they are opposed to inclusion because it is "just a way to save money," others argue they cannot provide special education in more inclusive settings because it is more costly. Although it is believed that no comprehensive, quantitative evaluation of this question has been conducted, one recent qualitative investigation of the subject (McLaughlin, 1994) concluded that inclusive services, with proper supports, appear to cost about the same as more traditional programming.

Thus, while undoubtedly a few creative local school officials may be able to use the additional discretion handed to them with some creativity to provide a broader, and more appropriate, range of services for the special education population in their school, it is not clear that considerable resources will be freed up, by moving special education students out of self-contained and into general education classes, that can be used to support a lot of additional activities at the school. Furthermore, without proper support for training, few local schools are likely to make this transition easily or effectively.

In addition, on page 27 of the report, it says that districts should encourage the development of "specialized settings," which seem to be programs in central settings other than the neighborhood school for most of the children who would be specially assigned there, "by providing significantly enriched allocations for every student referred from a neighborhood school to a specializing neighborhood school." (p. 27) This appears to create a conflicting fiscal incentive for placements outside neighborhood schools.

In addition, the proposal calls for the enrichment allocation to be joined by other categorical funding sources available at the school, which could create a substantial pool of supplemental funds for more creative and efficient program provision. However, federal Title 1 funds generally can not be used to meet the needs of all the school's students unless it qualifies as a schoolwide project. Although many of the schools in New York City would meet the schoolwide qualifications and therefore would be unaffected by these limitations.

Also, under current federal law, IDEA funds can only be used to benefit special education students. However, as will be discussed later in more detail, U.S. Department of Education recommendations currently before Congress would allow other students to receive "incidental benefit" from these funds. In current form, these provisions would tend to discourage the kinds of flexible school-based flexibility in the use of categorical resources as described in the *Focus* plan. However, in practice this type of flexibility in monitoring the use of funds has been implemented by innovative districts across the country. For examples and a discussion of this type of consolidation of funding and services from local and federal perspectives, see Verstegen, 1995 and McLaughlin, 1995.

Assuming that some form of enrichment allocation would be created, the report does not always consistently specify the type of student it is designed to benefit. Is it for the benefit of all students or just students at risk? The report is not consistent on this point. However, recommendation 3 on page 40, which calls for improving the education of all students, and particularly those at risk, seems more in keeping with the unified systems concept that the overall set of recommendations is designed to promote. Clarifying that *all* students have special needs while still recognizing that some students may be more at risk of failure in schools than others seems more consistent with the unified concept as opposed to policies specifying that a given pool of funds can only be spent on some special classification of students.

Another major concern with the school-based finance proposal is what happens after the five year hold harmless guarantee for schools expires? Even if incentives were clearly in place for substantial changes in school and district behavior, and separate funding were made available in support of this type of reform, it would seem likely that it would take five years before substantial changes in such measures as the number of students identified for special education would be observed. However, as currently written, this is the time limit for the "hold harmless" guarantee. Local administrators are so accustomed to funding systems built on head counts of students, that they will always be likely to suspect a return to this type of model. If it is clearly specified that they may face substantial cutbacks in support for special education in five years if they start to drop their enrollments, it seems very unlikely that any movement will be seen.

Instructional Support Teams (ISTs) are specified in *Focus* as an important element of the proposed reform. Where implemented successfully, this concept can be useful as an early warning and prereferral intervention system for students with a broad range of special learning problems. They have also been shown to be cost-effective. For example, in Shields, et. al. (1989), over one-half the cost of these teams was found to be offset by a reduction in inappropriate special education assessments. However, when comprised of large numbers of staff they can be costly. It also cannot be expected that they will be successfully implemented in the absence of initial and follow-up staff training.

Concluding comments on the school-based finance plan. The plans specified in *Focus* are very ambitious, and it is undoubtedly unrealistic to expect, or plan for, implementation all at once. At the same time, some bold transition may be needed for these recommendations to take hold. For example, for the plan to be taken seriously, it may need to be even stronger in its recommendations regarding the reallocation of resources. It seems clear that participating neighborhood schools will need more than just greater flexibility in the use of existing resources. For example, it seems likely that they will need the full range of resources that would be made available through the transfer of students from special schools. It seems unrealistic to expect them to take on these formidable new responsibilities at *less* cost than serving these students in more restrictive, centralized settings.

To place real "teeth" in the finance component of this plan, it may be necessary to redirect the full range of special education resources, to include school administration and transportation costs, away from these specialized settings directly to participating local schools. If they choose to purchase separate, special schooling services for some of the students in their charge they may use these funds to do so. However, this type of reallocation scheme would also give them the realistic option of acquiring the additional resources, training and physical plant modifications that will be needed to serve this special population of students in local and inclusive settings, with full and appropriate levels of local support.

For these reasons, it seems totally unrealistic to expect "cost savings" in conjunction with the proposed reforms, as discussed on pages 55 and 56 of the *Focus* plan . More realistically, the question seems to be whether any substantial change can really be expected without some form of additional investment, or at least a bold reinvestment of existing resources away from special and into local schools. For example, several of the key components outlined in the plan would seem to require new funding. Full implementation of the *Focus* recommendations will result in substantial changes in the day to day job responsibilities of many district employees and would probably result in a change of job title for a number of others. Major shifts in traditional service patterns do not come about painlessly and it would seem that a major retraining effort will be needed. Also, the commitment to move students with disabilities to neighborhood schools would seem somewhat weak and insincere if large numbers of these schools were left inaccessible. This too will require an investment of resources over time.

Rather than savings, it seems that the impetus for making these kinds of changes should be based on the need to use scarce public education resources in the most *efficient* manner possible. *Focus* provides a renewed vision for better meeting the needs of all students, serving students with disabilities in the least restrictive environment, and a renewed emphasis on student learning. Major efficiency gains in improving the learning outcomes for all students would seem ample justification for the recommended changes.

A NATIONAL CONTEXT: ISSUES AND EXAMPLES

The purpose of this section of the report is to place some of the recommendations from *Focus* in a comparative context. It has already been noted in the introduction, that the consideration of this form of comprehensive special education reform is not unique to New York City. School districts, states and the federal system of special education governance and provision are currently undergoing a similar review, and many are making recommendations comparable to those found in *Focus*. In this section, the finance elements of *Focus*, as well as some of the program recommendations that relate to them, will be compared to this national movement. How does the *Focus* plan and the resulting recommendations compare to what is found in other parts of the country? Where have similar reforms been implemented, and what has been the result?

As a first step, it is important to place the *Focus* recommendations in a broader national, and indeed international, context. What is causing the sudden reconsideration of current special education policy across the United States, and in other developed nations around the world? Based on surveys of special education officials in all fifty states (CSEF, 1993, 1995), and several dozen presentations and conferences at the state, federal and international levels over the past several years, this movement seems to be driven by several key factors. These include questions about the most appropriate placements for students with disabilities, the costs of those services, and the need for increased decision making and flexibility in the use of funds at the local level.

Perhaps the most contentious of these issues relates to most appropriate placements which is tied to the concept of special education "inclusion." The essence of the inclusion movement is that students with disabilities should be granted full rights to be educated with their non-disabled peers. The strongest advocates of this movement argue that "all means all," meaning that all students with disabilities should be educated in integrated placements with a diverse mix of other students. Others simply point to the least restrictive environment (LRE) provisions that have been in place since the passage of the federal special education law in 1978. These issues are not unique to the United States, as evidenced by a recent international conference held in Washington DC, in which at least a dozen developed countries described the inclusionary goals, and progress toward meeting them, in their respective countries.

While there are clearly discrete elements to these three sets of factors that seem to be driving many of the special education reform initiatives seen of late, there is also much overlap. Increasing law suits and compliance review findings related to unwarranted segregation in the placement of many special education students have led to a number of questions about how the costs of these placements compare to the provision of less restrictive services. They have also led to the realization that state and federal funding provisions often contain fiscal incentives for increasing the number of students identified for special education, and sometimes contain fiscal incentives for attributing more severe disabling conditions to students, or for placing them in more restrictive settings.

The perception, and sometimes the reality, of increasing special education identification rates and costs raises questions of the degree of entitlement received by special education students, as compared to all other students. There seems to be a growing perception that as a general rule separate services for many discrete categories of students is costly, inefficient, and often not in the best interests of students.

At the same time, with increased pressure on schools to be accountable, to have high expectations, and to be able to show results, the general standard of acceptable performance is being raised in school systems throughout the country. As these standards rise so does the percentage of students unable to meet them and consequently the number of students who are considered to be in need of some form of special help. All of these issues lead to questions of how finite educational resources can best be used to meet the educational needs of all students.

What changes in governmental policy have come about in response to these issues? Although there are clear differences in the ways in which the issues described above affect policy makers at local, state and federal levels of governance, there is also a somewhat surprising degree of commonality, especially as they relate to funding issues. For example, the federal government, states and school districts all allocate funds for special education students to the jurisdictions below them. A common set of issues is confronted at all three levels. Exactly what kinds of *program* policies should be fostered at these lower levels of jurisdiction, and what kinds of *fiscal* policies should be crafted to support them? In addition to issues related to fiscal incentives and disincentives for certain types of program policies, there are also the more traditional sets of school finance criteria to contend with, which relate primarily to the fairness and sufficiency of funds.

Although many of the issues to be discussed below will be common to multiple levels of governance, it is also important to note that most of the discussion presented below is on research at state and federal levels of governance. For additional discussion of related issues as they pertain more directly to school districts, McLaughlin and Warren (1994) and McLaughlin (1995) are recommended.

Starting at the federal level, two important policy changes relevant to this discussion of *Focus* are contained in the U.S. Department of Education's recommendations to Congress made in conjunction with the IDEA reauthorization. The first is to allow some increased flexibility in the use of federal special education funds. While previously, these funds could only be used for the direct and exclusive benefit of special education students, the suggested changes would allow non-special education students to also derive "incidental benefit" from their use. As an example, under the revised rules it would be permissible for a federally funded special educator to teach a mixed reading class that included a special education student, who was the primary beneficiary of this special instruction, even though general education students would also receive incidental benefit from the instruction. This is a smaller, but analogous, step to the blended funding and service provisions recommended in *Focus*.

A second relevant current U.S. Department of Education recommendation is that federal special education funds no longer be allocated on the basis of the number of special education students in a state, but rather on the state's overall school-age population. Similar to the block grant provision included in *Focus*, the purpose is to remove the fiscal incentive for increased special education identification, and to no longer take money away from states who are dropping their special education count. Also similar to *Focus* is a "hold-harmless" provision that would not allow any state to fall below its current level of funding. However, it should be noted that there is not unanimity of support for this finance change and its passage is far from assured.

To a large extent, the federal government took its cue from several key reform states. Before turning to the specifics of the provisions and experiences in some of these states, it should be noted that many states have been reviewing their funding formulas to see if they contain fiscal incentives for more restrictive placements. Some of this scrutiny has come as the result of complaints from local school officials who found that they were losing state funds as they moved to more inclusive placements for their special education students, even though per-student costs had risen or stayed approximately the same.

Concerns of this type also gained the attention of U.S. Department of Education program monitors, who then began monitoring the states on this criterion. Although data on the exact number of states in which these issues have been discussed are not generally available, to date, the two states mentioned most predominantly in this regard are New Jersey and New York. Fiscal incentives for restrictive placement were specifically mentioned in the monitoring reports for those two states.

How and why are fiscal incentives for more restrictive student placements included in state formulas? While they tend to come in a variety of forms, clearly these formulas were not designed with this purpose in mind. Rather, they generally tend to be an artifact of the argument that funding allocations should relate to program cost. While this makes perfectly good sense, in practice because the most restrictive placements also tend to be the highest cost, many of the special education funding formulas in place throughout the states inadvertently resulted in funding *incentives* for more *restrictive* placements. At the same time, because they were generally designed around a set menu of alternative placement options when general classroom placements with supports for students with disabilities were uncommon, this type of mainstream placement option was often excluded from the menu. Thus, in some instances, no funding provisions were in place for fully integrated placements for students with disabilities. Because separate funding provisions for placing students with disabilities in private placements are also sometimes more generous than public school options, they too can create fiscal incentives for more restrictive, or isolated placements. For a fuller discussion on removing fiscal incentives for restrictive placements, see Parrish, 1995.

State funding provisions that have been developed to remove fiscal incentives for certain types of placement are described as "placement neutral." Other states have taken a step beyond the removal of incentives for certain types of placements to the removal of incentives for further special education identification. The U.S. Department of Education recommendation described above (i.e. to change the basis of special education funding from the number of students identified for special education to the total school age population of a state) is an example of this type of funding approach.

These funding approaches have come to be called "census-based" approaches. Their underlying rationale is that variations in the number of students *identified* for special education is not necessarily a good indication of variation in the true *need* for these services, and that basing funding on the number of special education students in a state, or district, creates an incentive for further identification.

States that have adopted census-based funding approaches include Pennsylvania, Massachusetts, and Montana. Vermont has a three-tiered formula, of which this type of census-basis is an important component. In addition to the U.S. Department of Education's recommendation that federal funding be allocated on this basis, similar reform proposals of this type have been developed and are currently being considered in the states of Illinois and California. Although this seems the most prevalent of the approaches to which the reform states are turning, it is clearly not without controversy. For example, it is not certain if the proposal for change at the federal level will be accepted by Congress and meanwhile some powerful constituents in the state of Pennsylvania are calling for a revision of their fairly newly adopted census-based approach. One example of this controversy is the argument by some that such a system is unfair precisely because it allocates equal amounts of special education aid to two districts of the same size even though one may identify 12 percent of its population for special education, while the other district only has six percent so identified. (For a full discussion of some of the pros and cons and other issues related to census-based funding systems, see Parrish and Verstegen, 1994.)

A related approach to allowing for previously recognized cost variations (based on the number of students identified and perhaps on the type of service received) is to simply freeze district (or school) funding at some current base level. On a statewide basis, this approach was adopted by Massachusetts prior to their new, census-based formula, and is currently in effect in Utah. At the same time that the cost adjustments in place at the time of the freeze are recognized, districts (or schools) get locked in at this fixed level of reimbursement regardless of the future decisions they make about the identification of students for special education or where they are placed. This approach has the advantage of removing incentives for continuing identification and allows a great deal of flexibility for how special education funds are used, as this funding is no longer tied to specific students, types of placement, or categories of disability.

The *Focus* proposal to establish a base amount of revenues for each school and then to "hold schools harmless" at this level seems closest to the types of base funding approaches with frozen allocations, described above. Traditionally, a major point in these systems is not only to not reduce allocations for districts if the number of identified students goes *down*, but also to not allow increased allocations if the number of identified students goes *up*. As *Focus* talks about "hold harmless" provisions rather than a freeze, this is less clear in this instance. However, if the "hold harmless" is only a floor which funds cannot fall below, the fiscal incentive to continue to identify additional students for special education would appear to still be in place.

In addition, a problem with this kind of freeze is that the base funding amount may not make a lot of sense even in its first year of implementation if there were inequities in the old system, and will make less sense with changes in local conditions over time. Because it has no natural self-adjustment mechanism, it will become farther and farther removed from any measure of true student need.

What has been the experience of these census-driven formula states? Although often cited, Vermont is perhaps not a good example, because it is not a pure census-based system. Although overall district enrollment is a substantial component of the formula in this state, and it is the state with which this concept is most often identified because it is believed to have originated there, in fact the overall formula for the state has three separate tiers and is somewhat complex. In addition to the census-based component, there is a reimbursement component and a third tier that relates to the extraordinary costs that individual districts may face.

Based on a phone survey of parents, state and local administrators, teachers and advocacy organization representatives, the overall response to the system seemed quite positive. The state also realized the expected impact of such a removal of incentives to continue identifying special education students in the form of a fairly substantial drop in the count of special education students statewide. The Vermont State Director of Special Education, Dennis Kane, also notes substantial increases in the numbers of students with disabilities receiving more inclusive, integrated services in their neighborhood schools since the advent of this reform. While he attributes this at least partly to the change in the funding formula which removed fiscal disincentives to such inclusive placements, he also points to the years of training that have been and continue to be needed to prepare staff both psychologically and logistically for such a transition. For a discussion and a qualitative evaluation of special education finance reform in Vermont, see Montgomery, 1995.

Another lesson learned from Vermont is the importance of follow-up evaluation after the decoupling of special education funding from a count of special education students. If this revised funding policy leads to a reduction in the numbers of students identified for special education, as expected, there will inevitably be questions from the state legislature about why funding for special education needs to be maintained at current levels.

A great deal of additional flexibility in the use of funds came with the Vermont reforms, as is being advocated by *Focus*, and while the number of students being given formal special education labels dropped, the numbers of students receiving direct services by special education staff actually increased. Thus, similar to the *Focus* recommendations, special education resources were being used in a more flexible manner to better meet the needs of all students, and especially students at risk. Although special education identification rates were down, the number of students receiving some form of special services had gone up. Because more students were being successfully served with the same amount of funds, efficiency had been increased. However, evaluation findings showing these results were important in encouraging the state to maintain current levels of support for this program.

Perhaps the state of Pennsylvania provides the most powerful example for the New York City schools to consider. Prior to the reform, costs and special education identification rates in the state were rising at a steady pace. This was largely due to the fact that the state had a full reimbursement funding system. This meant that the state would reimburse the districts for basically all that they spent on special education. It is not surprising that this type of "blank check" led to increased expenditures and referrals in the special education system. The state also had a history of decentralized services being provided in special schools run by regional special education units. Similar to the situation in New York, this type of system which was not locally based, led to relatively high levels of segregated and remote placements for students with disabilities.

In response, Pennsylvania developed a new funding formula that was quite simple in its orientation, but which was also controversial. The new formula was reported to profoundly affect the lives of a number of special education service providers in the state, especially the providers of regional services, because it strongly emphasized services at the local level through the redirection of funds. Another source of controversy is inherent in census-based funding systems. First, it removes all incentives for the further identification of special education students, which alone is a concept not welcomed by many special education advocacy groups. In addition, the fact that districts with the same overall enrollment are allocated identical amounts of special education aid regardless of the number of students they identify for service and the amount of money spent on them raises some classic equity concerns. Is it fair to give the same amount of special education aid to two districts of identical size who serve very different percentages of special education students?

Perhaps the point most important for New York to consider is that Pennsylvania now allocates state special education funds *directly to local districts*, whereas before a substantial proportion of these state funds for special education had gone directly to regionalized service providers. This relatively simple move of redirecting the flow of funds altered the entire decision making structure affecting where students with special needs would receive services. Because under the old system funds flowed directly to the regional special education districts, this became the default location for the provision of services. However, once the flow of these dollars was directed to the local districts in which students resided, districts could then decide whether to provide services themselves in the home district environment or to purchase services from the regional provider.

This decision was then based on the economics of home versus remote provision and on the most appropriate alternative for each individual child. The result was that many students with special needs returned to their home districts to receive services. Regional operators either had to shut down or change considerably the way they had been doing business. The bottom line seems to have been that many of these special district staff members were hired by local districts and that children were more likely to be receiving a less restrictive set of services in their home schooling environments.

As in New York City, the need for increased flexibility at the local level has also been a major factor influencing state fiscal reform. An important concern in a number of states is the lack of a fiscal mechanism to support more integrated services, thereby greatly restricting local flexibility in the design of appropriate services. A second concern relates to the inability to use special education funds, or the unavailability of other funds, to support certain types of instructional interventions outside of special education. Consequently, when special education is the only available source of funding for intervention services, there will be constant pressure on special education enrollments and costs.

Interestingly, the majority of states do not require that special education funds be spent on special education services, which allows the ultimate in flexibility. In Massachusetts, for example, funds go to the township, which at least theoretically may decide to use them to buy a new fire engine. In other states, alternative uses may be limited to prereferral or other types of remedial or intervention services. In some states, it seems that this type of flexibility has always been available, but has not been widely promoted or publicized. In other states, it has been granted more recently with the express purpose of promoting the development of some type of prereferral assessment and intervention system.

An example of such a statewide prereferral system is found in Pennsylvania, which developed the concept of Instructional Support Teams (ISTs), which appear to be the same basic concept as is proposed in *Focus*. In Pennsylvania, the ISTs have been described as the linchpin of its financial reform package. Although Pennsylvania requires that special education funds be spent on special education services, IST services are included in these costs for auditing purposes. The state provided for a five-year phase-in period to develop IST teams in every school. During the phase-in, participating schools were to receive grants of $30,000 per year to hire an IST teacher, although funds for statewide implementation of ISTs during the phase-in period were not available for all years. Consequently, establishment of ISTs in all schools was uneven. The IST teacher was to be responsible for leading the IST process at the school and for providing any interim interventions that the team may recommend. Such prereferral intervention systems are also found in Vermont and in a number of other states throughout the nation.

The IST team is in Pennsylvania is comprised of the referring teacher, the IST teacher, and the school principal. This program also calls for the state to provide an intensive year of training for all school staff during the first year of implementation, followed by a year of follow-up training. Furthermore, the program is coupled with a state aid system that contains no fiscal incentives for high cost placements or for identifying a greater number of special education students. Thus, the entire system is designed to provide local districts with the resources, training, and discretion they need to provide a broad array of educational services to students with varying educational needs. It was anticipated that the availability of IST services and the fact that state special education aid is not tied to the number of students identified would cause the state's special education counts to drop. Consequently, after 2 years it was expected that local districts would be able to support the cost of IST teachers through savings from this reduction of direct special education services. It appears that this expectation has not been fully realized and that full IST implementation has not occurred as quickly as had been hoped or expected. In addition, while the count of special education students in Pennsylvania has steadied, the expected appreciable decrease in the special education population statewide has thus far not occurred.

Attempts to incorporate alternative intervention systems in states where special education aid is directly tied to the number of students identified may face even more formidable implementation hurdles. As special education counts drop in these types of systems, local districts may stand to lose considerable state special education aid. In Oregon, for example, the funding system is based on a single weight, which is applied to all special education students up to a cap of 11 percent. Because there is no requirement that these funds be spent on special education services, districts have discretion to set up alternative intervention systems such as ISTs. However, as special education counts drop in these districts, state aid is lost. As a result, phone interviews with local special education directors in Oregon revealed that some of those who had previously incorporated IST-type systems in an attempt to drop their overall special education counts were now under pressure to get their special education counts back up to the funding ceiling of 11 percent. Such pressures, however, do not exist in population-based funding systems like those found in Pennsylvania, Vermont, Massachusetts, and Montana, because state aid is not dependent on the number of special education students identified. For a discussion and qualitative evaluation of special education finance reform in Oregon, see Montgomery, 1995.

In New York, it is unclear how the prescribed expiration of the five-year hold harmless provision specified in *Focus* might affect special education identification patterns. First, the only reform state that clearly seems to have shown a drop in the number of students identified for special education to accompany the removal of the fiscal incentive for identification is Vermont. This may be because their long term commitment to this type of system seems fairly well established and because of the considerable training that accompanied the introduction of this full package of special education reforms. Oregon had the training, but did not remove fiscal incentives for further identification and after an initial drop in the number of students identified, was beginning to show indications of rising enrollments. The lessons for New York City may be that the removal of fiscal incentives for the further identification of students may not be sufficient to decrease inappropriate referrals, that this removal must be accompanied by fairly extensive training and the clear establishment of alternative intervention systems for students at risk, and that the temporary lifting of fiscal incentives for identification may have little affect if it appears that this is a short term commitment (e.g. the five year hold harmless period proposed in *Focus.*)

A final issue from the states that is directly relevant to a proposal in *Focus* relates to the emergency fund. As described on page 54, "Because particular conditions in specific schools and districts can sometimes produce an intensification of disability, we recommend that districts maintain an emergency reserve fund available for allocation to schools experiencing legitimate and sharp increases in student need." The need for such emergency funds has increased as the states have moved away from cost-based to flatter, block grant type funding models for the exact reasons specified in *Focus*. However, the implementation of such a system has proven to be tricky in the states. It seems that if the criteria for access to these funds are too loosely specified, the case for eligibility is suddenly made by districts, or schools, for a broad range of students. In fact, eligibility for this type of supplemental funding can create the exact kind of incentive for most costly placements that census or block type funding provisions are designed to avoid. On the other hand, if criteria are specified too tightly, the fund may go virtually untouched and eventually may be phased out.

The state of Oregon found it sufficiently difficult to distinguish between what did and did not constitute an "emergency," that at one time they had local special education directors wishing to make such a case do so before their peers from across the state. If the other directors agreed that an emergency did indeed exist, the overall statewide special education allocation would be reduced by the awarded amount. This system did not stay in place long. Iowa, another state with such a system in place, allows "catastrophic cost" funding for students requiring a special education program costing more than three times the regular program cost per pupil. Connecticut assumes financial responsibility for funding 100 percent of special education costs that exceed five times the average per pupil cost. Thus, while such an emergency fund is increasingly being considered by states, they can be tricky to implement. Especially important is to not create the types of incentives for more costly, and restrictive, services that the system overall is trying to discourage.

THE NEW YORK STATE SPECIAL EDUCATION FINANCE FORMULA

As noted in the report, it will be important that the recommendations contained in *Focus* be made compatible in some way with the New York state special education formula. Otherwise, state provisions could limit the added flexibility in the use of special education funds sought by *Focus*, or in an even worse case scenario, the city could lose current levels of state support. Clearly, district-level reforms that openly conflict with state regulations and which could result in a loss of local funds, will not be likely to succeed over time. In fact, it has been this exact type of concern on the part of local districts that has provided much of the pressure to reform what are seen as overly restrictive and inflexible state policies. When local officials begin to believe that they are being financially punished by the state for doing the right thing for the students they serve, a great deal of dissonance is created that generates considerable pressure for reform. Similarly, pressure on the federal government by certain reform states was an instrumental element in the proposed changes to federal funding, as described earlier in this report.

Problems with the state's special education finance formula are described in *Focus*: "New York State funding formulas encourage the over-referral and over-placement of students into special education ... and ... create incentives to place students in more restrictive settings." They "should be revised so that funding is program neutral, promotes placement in less restrictive settings, and creates incentives to educate students in their home schools." (p. 51) Short of changing the statewide system, *Focus* requests a waiver from the state that would guarantee funding over a five year period and allow considerable additional flexibility in the use of funds. While the likelihood of receiving such a waiver from the state is unknown, it seems to make a great deal of sense to ask for such provisions if the city feels they are appropriate. As previously mentioned, special education finance reform is presently occurring in over one-half the states, and the state of New York is clearly aware of the potential need for change, as described below.

In addition, the state has received pressure from the U.S. Department of Education to change its special education funding system. As described above, all of the states are being scrutinized by federal monitors as to the extent to which their special education funding formulas contain incentives for more restrictive placements. In the U.S. Office of Special Education Monitoring Report for 1993, New York was cited based on this issue. In its response, the state refused to submit any corrective action, because it did not believe that the federal government had authority over such areas. Thus far, no response has been received by the state from federal officials. These issues may currently be under continued review as federal officials attempt to determine the exact extent to which they do have jurisdiction to demand such changes in state funding provisions.

At the same time, however, the state has been aware of this problem and has been working over the past several years to develop alternatives to the current special education funding provisions. However, it is not clear that the current reform proposals would address many of the concerns with the formula as addressed in the *Focus* report. Although the details of the alternative proposals are not completely known or agreed upon, it appears that the predominant set of suggestions currently being considered is for a special education reimbursement model. Without knowing the specific provisions being considered, it is not possible to determine the extent to which these alternative proposals would align or conflict with the *Focus* recommendations. However, it would generally be expected that a reimbursement plan could have the advantage of considerable flexibility in the use of funds, but probably only within special education. That is, it seems likely that all, or at least most, of special education costs would be eligible for reimbursement at some level, regardless of where services are provided. Thus, incentives to place special education students in one type of placement over another would generally disappear under such a system. However, as it seems likely that only the resources used to serve special education students would be eligible for reimbursement, it is not clear to what extent they could be used in a more flexible way to benefit a broader range of students. In addition, under this type of revised system, incentives for continuing current levels of identification for students with disabilities would be likely to remain in place. Again, it seems unlikely that students would be eligible for reimbursement, or the receipt of special services, without formal identification.

During a visit to the state about a year ago to discuss special education finance reform across the states in general and the New York special education finance proposal in particular, the author was informed that while this type of proposal had been more or less developed for awhile, state officials were having trouble getting it past the general recommendation stage. Without a superior alternative in hand, the state seemed reconciled to maintaining the present system, although it was not clear that it was particularly well thought of by anybody. For a case study presentation of the politics of special education finance reform in three states, see Parrish and Montgomery, 1995; and for a description of special education finance formulas across the states see O'Reilly, 1993.

The point is that the time may be right for the largest school district in the state to exercise some leadership in assisting the state to consider what special education funding provisions should be in place for the state. Some of the guiding principles as specified in *Focus* may provide just the impetus needed to assist the state in this important area of reform. The possibility of a waiver for New York City might also be considered by the state as a basis for trying out some of these proposals prior to the consideration of their implementation statewide.

CONCLUSION

Focus is a generally well thought out set of provisions for the reform of special education in New York City. Its guiding principles and specific reform objectives seem to make a lot of sense and are well aligned with the general direction of special, and overall, education reform across the country. Its greatest weaknesses appear to be in areas of implementation. For example, is it reasonable to talk of cost savings in the face of the very tough set of implementation issues discussed in this report? If all of this could be undertaken at no added cost, the expected efficiency gains could be well worth the reallocation of funds that would be required. Thus, while it may be possible, and in fact imperative, to implement these kinds of changes with no new funds, it seems that at the very least a substantial redistribution of existing funds will probably be needed.

Experiences of other states, including Pennsylvania and Vermont, have shown that building the capacity of schools to successfully implement ISTs and provide locally-based specialized services requires a massive commitment on the part of administrators and general and special education staff and must be backed by appropriate and sufficient resources for training and support. Any redistribution of funds will likely come at a cost to the city's more traditional, separate special education schools. It would seem that major changes in the operation of these specialized schools will be needed to allow the redistribution of funds to the local level. Without these types of incentives clearly in place, it is hard to envision the wholesale willingness of local school officials to take on the significant new responsibilities described in *Focus.*

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REFERENCES

Allington, R., Steutzel, H., Shake, M., & Lamarche, S. (1986). What is remedial reading? A descriptive study. *Reading and Research Instruction, 26*, 15-30.

Anthony, P.G., & Rossman, G.B. (1993). *Restructuring for the integration of all students: Third year implementation report: The 1992-93 school year.* Malden, MA: Department of Education.

Bulgren, J.A., & Carta, J. (1992). Examining the instructional contexts of students with learning disabilities. *Exceptional Children, 59*, 182-191.

Madden, N.A., & Slavin, R.E. (1983). Mainstreaming students with mild handicaps: Academic and social outcomes. *Review of Educational Research, 53*, 519-569.

Montgomery, D.L. (1995). *Profile of special education finance reform in Oregon* (State Analysis Series). Palo Alto, CA: Center for Special Education Finance, American Institutes for Research.

Montgomery, D.L. (1995). *Profile of special education finance reform in Vermont* (State Analysis Series). Palo Alto, CA: Center for Special Education Finance, American Institutes for Research.

McLaughlin, M. J. (1995). *Consolidated special education funding and services: A local perspective* (Policy Paper No. 5). Palo Alto, CA: American Institutes for Research, Center for Special Education Finance (CSEF).

McLaughlin, M. J. & Warren, S. H. (1994). *Resource implications of inclusion: Impressions of special education administrators at selected sites* (Policy Paper No. 1) Palo Alto, CA: Center for Special Education Finance, American Institutes for Research.

Moore, M. T., Strang, E.W. Schwartz, M., & Braddock, M. (1988). *Patterns in special education service delivery and cost.* Washington DC: Decision Resources Corporation.

O'Reilly, F. (1993). *State special education finance systems, 1992-93.* Palo Alto, CA: Center for Special Education Finance, American Institutes for Research.

Parrish, T. B. (1994). *Fiscal policies in special education: Removing incentives for restrictive placements* (Policy Paper No. 4). Palo Alto, CA: American Institutes for Research, Center for Special Education Finance (CSEF).

Parrish, T. B. & Montgomery, D. L. (1995). *The Politics of Special Education Finance Reform in Three States* (State Analysis Series). Palo Alto, CA: Center for Special Education Finance, American Institutes for Research.

Parrish, T. B. & Verstegen, D. A. (1994). *Fiscal provisions of the Individuals with Disabilities Education Act: Policy issues and alternatives* (Policy Paper No. 3). Palo Alto, CA: Center for Special Education Finance, American Institutes for Research.

Shields, P.M, Jay, E.D., Parrish, T. B. & Padilla C. (1989). *Alternative programs and strategies for serving students with learning disabilities and other learning problems.* Menlo Park, CA: SRI International.

Verstegen, D. A. (1995). *Consolidated special education funding and services: A federal perspective* (Policy Paper No. 6). Palo Alto, CA: American Institutes for Research, Center for Special Education Finance (CSEF).